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## ELECTION COMMISSION, INDIA

NOTIFICATION

*New Delhi, the 21st October 1954*

**S.R.O. 3417.**—Whereas the election of Shri K. T. Kosalram, as a member of the Legislative Assembly of the State of Madras, from the Sattankulam constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri M. R. Meganathan, son of Shri M. Ramaswami of Padukkapathu, Tiruchendur Taluk, Tiruchendur Post, Tirunelveli District (Madras State);

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, TANJORE.

PRESENT:—

Sri K. S. Venkatraman, I.C.S., *Chairman.*

Sri R. Rajagopala Ayyar, B.A., B.L., *Member (Judicial).*

Sri P. B. Narasimha Ayyar, B.A., B.L., *Member (Advocate).*

*Monday, the 4th day of January 1954*

ELECTION PETITION No. 110 OF 1952.

BETWEEN:—

M. R. Meganathan—*Petitioner.*

AND

1. K. T. Kosalram
2. S. G. Jayaraja Nadar
3. Mohammad Hussain
4. Mangala Ponnambalam *alias* Natarajan
5. S. Arumugha Pandian
6. Joseph Nazereth
7. V. V. Perumal Nadar
8. S. J. Thangadurai
9. G. Nuthu
10. Selvarajan of Arumughaneri—*Respondents.*

Petitions dated 5th April 1952 and 6th April 1952 under Chapter II of the Representation of the People Act 1951, to declare the election of the returned candidate, the 1st respondent herein void and the petitioner to have been duly elected and for costs.

This petition coming on for final hearing on the 21st day of December 1953, in the presence of Sri K. V. Narayana Ayyar, Sri S. T. Adityan and Sri R. Jagannathan, Advocates for the petitioner, of Sri V. T. Rangaswami Ayyangar and Sri S. P. Sivasubramania Nadar, advocates for the 1st respondent, of Sri V. S. Sankarasubramania Mudaliar, advocates for respondents 4 and 10, of Srl T. V. Satagopacharlar and Sri Selvaraj, advocates for Sri K. T. Somasundaram, the election agent of the 1st respondent (R.W. 6), and the other respondents being *Ex parte*, and having stood over to this day for consideration, the Tribunal passed the following:—

ORDER

This is a petition under Part VI of the Representation of the People Act, 1951 to set aside the election of the 1st respondent who was the successful candidate at the election for a seat in the Madras State Legislative Assembly from the Sattankulam-Udangudi Constituency. There were at first as many as eleven candidates including the petitioner and the 1st respondent. Seven of them ultimately withdrew leaving the fight to the remaining four candidates. The election took place on 12th January 1952. The 1st respondent Sri K. T. Kosalram who topped the polls and secured 12,498 votes was declared duly elected. The petitioner Sri M. R. Meganathan, who came second has come forward with the present petition to declare the election of the 1st respondent void.

2. The petitioner sent two petitions to the Election Commission, one on 5th April 1952 and another on 6th April 1952. Both the petitions reached the Commission within the time allowed by law and were treated by it as one petition and numbered as Election Petition No. 110 of 1952 and sent to this Tribunal for trial. To the first petition only the candidates who actually contested the election were joined as parties. The petitioner was evidently advised, in view of the provisions of Section 82 of the Representation of the People Act (hereinafter referred to as the Act) that it would be safer to implead all the candidates who were duly nominated (including those that withdrew) as parties and we find all the ten candidates other than the petitioner) whose nominations were accepted, arrayed as respondents in the later petition. Both the petitions contain the usual allegations of bribery, undue influence and other corrupt practices and pray for the seat. Schedule A to the petitions gives particulars of bribery; Schedule B contains the allegations regarding coercion and intimidation amounting to undue influence and reference is made to the pamphlet which has been marked as Ex. A-13 in the case Schedule C relates to the alleged improper acceptance of the nomination of the 1st respondent and sets forth the grounds thereof; Schedule D mentions the other illegalities, irregularities and corrupt practices relied on by the petitioner to invalidate the election of the 1st respondent. In view of the shape that the contest ultimately assumed and the considerable narrowing down of the controversy (though at the time of arguments) it becomes unnecessary to set out in detail the allegations found in Schedules A, B and C and a good portion of Schedule D. The other matters found in Schedule D which are still the subject matters of controversy and require decision will be referred to in detail later. It may however be observed in passing that Schedule D of the petition of 6th April 1952 is an amplification and enlargement of the corresponding schedule of the petition of 5th April 1952 and contains in particular the items of expenses alleged to have been omitted in the return of election expenses lodged by the 1st respondent and the further allegation that the 1st respondent has employed, in connection with the election, persons for payment in violation of the provisions of law governing the same.

3. Respondents 1, 4 and 10 have appeared by advocates and the rest were set *ex parte*. The 1st respondent contends *inter alia* that the petition of 5th April 1952 is bad as it does not comply with the provisions of Section 82 of the Act as to joinder of parties, that the petition of 6th April 1952 is not valid as it is not accompanied by the deposit contemplated by Section 117 of the Act and that both the petitions are defective for lack of proper verification. The various allegations contained in the several schedules to the petitions and relied on by the petitioner to vitiate the election of the 1st respondent are denied as untrue.

4. The 10th respondent has filed a statement practically supporting the 1st respondent. Mr. Thangadurai, the presiding officer at Pothakalanvilai polling station whose conduct on the polling day is the subject matter of attack in Schedule D of the petition has filed a counter denying the allegations against him.

5. The following issues which arise on the contentions of the parties were framed by the Tribunal:

(1) whether the petition dated 5th April 1952 and the petition dated 6th April 1952 are liable to be rejected *in limine* on the grounds set out in paragraphs 3 to 6 of the counter of the 1st respondent?

(2) whether all or any of the acts of bribery detailed in Schedule A to the petitions are true and what is their effect?

(3) whether the 1st respondent caused publication of the notice referred to in Schedule B to the petition and whether such publication amounts to coercion and intimidation of Nadar voters under Section 100(1)(b) or will it invalidate the election under Section 100(2)(a) and (b)?

(4) whether the nomination of the 1st respondent is invalid for any of the reasons detailed in Schedule C?

(5) whether the irregularities or illegalities alleged in Schedule D are true and whether they form valid grounds for invalidating the election of the 1st respondent?

(6) whether the alleged incorrectness of the return of election expenses is relevant?

(7) whether the grounds in Section 100 are not available to the petitioner? In particular, whether the ground in Section 100(1)(c) forming the subject matter of issue 4 is not available to the petitioner?

(8) whether the election of the 1st respondent is liable to be declared void for all or any of the reasons set out in the petitions?

(9) Whether the petitioner is entitled to a declaration that he has been duly elected?

(10) whether he has not alleged sufficient grounds in the petition therefor?

6. Issues 1, 6, 7 and 10 which raise questions of law were tried as preliminary issues and were disposed of, after hearing arguments, by our order dated 2nd December 1952, a copy of which is appended hereto.

7. Though the petition raises various grounds against the validity of the election of the 1st respondent, Mr. K. V. Narayana Ayyar appearing for the petitioner restricted himself during arguments to three matters and did not press—and in our opinion rightly—the other contentions to be found in the petition. Of the seven instances of bribery mentioned in Schedule A, only one voter P.W. 23 Pechimuthu was examined and his evidence carries no conviction. The 1st respondent examined as R.W. 13 denies having bribed any voter. No attempt has been made to substantiate the allegation of undue influence forming the subject matter of Schedule B though Ex. A-13, the printed pamphlet referred to therein is relied on in another connection. No evidence was let in on the side of the petitioner to prove that the 1st respondent held an office of profit or had any share or interest in a contract of the nature specified in Section 7(d) of the Act such as would disqualify him from being a member of the State Legislature. Some feeble attempt was made in the cross-examination of R.W. 6 Sri K. T. Somasundaram to show that the 1st respondent was interested in such contracts but that was stoutly denied by the witness. We accordingly find issues 2, 4 and that part of issue 3 which relates to coercion and intimidation in the negative.

8. It is alleged in Schedule D that the 1st respondent made extensive use of photos of the type of Ex. A-15 wherein he is seen conversing with the Prime Minister and the Finance Minister of India and that this was intended to convey the impression, to the mind of the electorate, that they supported his candidature. It is next stated that the 1st respondent is guilty of false representations that he was standing as an Independent candidate of his own volition and that the Congress allowed him to do so at his own request. These matters are not now relied on. In paragraph 4 of Schedule D mention is made of the transport of voters to and from the polling station and three instances are given. P.W. 22 Lakshmana Thevar has been examined in this connection. His evidence is opposed to the case of the petitioner as he speaks only of an offer of transport and not actual transport. There are then allegations of misconduct on the part of Mr. Thanga Durai, one of the Presiding Officers. P.W. 26, the petitioner, is the only witness who speaks to this and his evidence itself does not amount too much There is then a reference to the procuring of the vote of one Syed Ibrahim Sahib by the 1st respondent and his agents It is not clear what is meant by this and no evidence was adduced to prove the same Schedule D winds up with a complaint that the village Munsif of Pandarapuram worked for the 1st respondent P.W. 7 Ponnusami Nadar and

P.W. 26 the petitioner speak to this. There is bitter feud between the family of P.W. 7 and that of the village munsif. The evidence is both meagre and interested.

9. We have so far dealt briefly with the various allegations found in the petition but given up by the petitioner during arguments—just to indicate that there is very little in the evidence to substantiate them. We shall now turn to the remaining three matters found in D schedule which alone are now relied on by the petitioner, in support of his case. It is urged on behalf of the petitioner firstly that the 1st respondent is guilty of the publication of false statements regarding the personal character and conduct of the petitioner which amounts to a major corrupt practice within the meaning of Section 123(3) of the Act;

Secondly, that the 1st respondent has employed propagandists in contravention of the Act and the rules made thereunder; and

Thirdly, that the 1st respondent has actually incurred expenditure in excess of the maximum of Rs. 8,000 prescribed by Schedule V of the Act. The last two, it is contended, are corrupt practices coming under the scope of Section 123(7) of the Act. Section 100 sub-section (2) clause (b) provides that, subject to the provisions of sub-section (3), any corrupt practice of the nature specified in Section 123 will of itself render the election of the returned candidate void if it has been committed by him or his agent or by anyone with their connivance. It is not necessary further to establish that the result of the election has been materially affected thereby.

10. Before dealing with the above three questions it is necessary to refer to and dispose of two general contentions advanced by Mr. V. T. Rangasami Ayyangar, the learned advocate for the 1st respondent that the said pleas are not available to the petitioner and should not be gone into by the Tribunal. We may at once observe that though several legal objections have been taken in the statement of the 1st respondent to the maintainability of the petitions, these points are not found therein. We however allowed them to be raised during arguments as they are said to go to the root of the matter and affect the jurisdiction of the Tribunal. The new pleas are (i) that the Election Commission had no jurisdiction to receive a second petition and that this Tribunal cannot therefore investigate matters found solely in the later petition. (This will apply only to the second of the contentions stated in paragraph 9 *supra* and perhaps in a lesser degree to the third also, for the first of them finds mention in the earlier petition also); (ii) that as the petitioner has described them as mere illegalities or irregularities and not as corrupt practices he is not entitled to rely on them as major corrupt practices which would *per se* render the election void—without allegation and proof that they have materially affected the result of the elections—in other words that they will be available only under Section 100(2)(c) but not under Section 100(2)(b).

11. The second objection is easily disposed of. The three matters which alone now form the grounds of attack of the validity of the 1st respondent's election are found in Schedule D. Schedule D is headed "Details of other irregularities". In the body of the petition they are referred to as "Other Illegalities". The contention is that because the petitioner has chosen to describe them as illegalities or irregularities only, they cannot be deemed to be corrupt practices specified in Section 123 of the Act and relief given to the petitioner on that basis. We are unable to agree. The Court should look to the substance rather than to the wording of a pleading. It is not the name or the label which the parties choose to give that counts but only the actual allegations. If the allegations amount to a corrupt practice as the law understands it—it is not and cannot be disputed that the allegations in the petitions do amount to corrupt practices—they will not cease to be such and the 1st respondent cannot avoid the consequences thereof simply because the petitioner has chosen to call them by a wrong name. Certainty is what is required and not technical precision of averment. And so when the words used fairly serve to inform the adverse party of the substance of the facts relied on to defeat his claim and the case he has to meet, the pleading is sufficient. (See the observations at page 580 of Mulla's Code of Civil Procedure, 12th Edition). In the present case the petitioner distinctly sets out the facts amounting to corrupt practices and relief is sought for on the basis that they will of themselves invalidate the election of the 1st respondent. Issues have been framed and parties have gone to trial on that basis and there is no element of surprise and no question of a fresh case being sprung upon the 1st respondent. The following extract from paragraph 7 of our order dated 2nd December 1952 on issues 1, 6, 7 and 10 makes the position quite clear. "In schedule D to the present petition itself it is alleged that certain items of expenditure which were actually incurred have been omitted in the return and that if they are included, the maximum limit permitted by Rule 117 would be found to have been exceeded. Similarly, it is stated that more men than those permitted by Rule 118

were employed. It is stated that these would amount to major corrupt practices under Section 123(7) of the Act. The petitioner is of course entitled to adduce evidence on those matters which are covered by issue 5." We may add that in I.A. No. 4 of 1952 the petitioner applied for the substitution of the words "details of corrupt and illegal practices" in paragraph 8 and Schedule D of the petition for the words found there, but as we thought that the amendments were unnecessary, we did not grant the same.

12. The arguments of the learned advocate on the first objection may be summed up thus: Though there can be several petitions calling in question the same election yet there can be only one petition by a single individual. When the Election Commission received the petition of 5th April 1952 it became *functus officio* and it had no jurisdiction to receive and entertain the petition of 6th April 1952 or refer the same to the Election Tribunal. This Tribunal has therefore no jurisdiction to go into the matter newly alleged in the later petition. It is the validity of these contentions that has now to be examined in some detail.

13. Both the petitions were presented within the time allowed by law and otherwise comply with the Statutory requirements governing the presentation of election petitions. We have not been referred to any rule of law or authority that forbids the reception of a second petition by the Election Commission and the consolidation of the two into one. On principle we are unable to perceive any reason against the reception of a second petition so long as it is in conformity with law, especially as an election petition involves much more than a question between the immediate parties to it and is a matter of public importance involving the rights of the entire constituency. One of the main objects of Election Law is to purge the election of all kinds of corrupt practices and this would be frustrated if a second petition at the instance of the same party is held to be legally barred.

14. Even if it be assumed that the principle embodied in Order II Rule 2, C.P.C., or one analogous to it applies and the petitioner was bound to include the whole of his claim even in the first petition and a second petition was incompetent, it would be open to him to rectify his error in bringing two petitions in respect of the same election by applying for leave to amend the earlier petition by adding the omitted portion and then withdrawing the later petition, especially as the first petition had not been even numbered on the date of the receipt of the second one. That this course is available to a plaintiff in a suit would appear from the commentaries under Order II Rule 2 in Mulla's Code of Civil Procedure, 12th Edition, Page 537, paragraph 4.

15. In the present case, the second petition is practically a repetition of the first except to this extent *viz.*, that new parties have been added as respondents and there is an amplification of the D schedule (a) by furnishing particulars of the items of expenditure omitted in the return of election expenses lodged by the 1st respondent which if included would show that the maximum of expenses allowed by law has been exceeded and (b) by the inclusion of an allegation that the 1st respondent has employed persons for payment in violation of the provisions of the election law relating thereto. Thus, it will be seen that it is the list appended to the petition that has been really added and supplemented. In Sitaram *v.*Yograjsing (A.I.R. 1953 Bombay 293) it would appear that the petitioner first sent a list along with the election petition and then an additional list both of which were forwarded to the Election Tribunal. Their Lordships Chagla C.J., and Dixit J. do not hold that the procedure was illegal. On the other hand, their Lordships observe that what the Tribunal has done is to permit the petitioner to amend the particulars given in the original list "by treating the additional list as falling under section 83(3)". The reception of an additional list is certainly not prohibited by law and that is what has been practically done in this case.

16. Again, it may be observed if objection had been taken even at the outset that the second petition is not maintainable for the reason now advanced, the petitioner could have applied for the amendment of the petition by the addition of the matters found in the later petition and obtained relief. The allegation that certain items of expenditure have been omitted in return of election expenses which if included, would bring the total beyond the maximum of Rs. 8,000 is already there and it is only the particulars of the omitted items that are sought to be furnished in the later petition. Even without an application we would have felt bound to call upon the petitioner to furnish particulars of the omitted items for the purpose of ensuring a fair and effectual trial of the petition. As regards the employment of paid propagandists, again there would have been no difficulty in allowing the amendment, if one was applied for, as that arises solely on the admissions contained in the 1st respondent's return of election expenses and the vouchers filed by him. The

matter is not one of jurisdiction and could easily have been cured by the amendment of the first petition and the 1st respondent cannot now be heard to say that matters not mentioned in the first petition cannot be the subject matter of investigation. As already observed, this objection does not relate to the first of the grounds stated in paragraph 9 "publication of false statement" and cannot relate to the third of the grounds either, as that finds a place in the first petition itself though in a bald form.

17. There is again one other answer to the above objection of the 1st respondent. The Election Commission has consolidated the two petitions into one and sent them for trial to this Tribunal. It is not open to this Tribunal to challenge the competence of the Election Commission to refer the election petition to it for trial. See the observations in Sitaram *v.* Yograjsing (A.I.R. 1953 Bombay 293 at page 294, column 2) cited above. To the same effect are the observations of their Lordships Satyanarayana Rao, J., and Rajagopalan J., in writ Appeal No. 49 of 1953 (which was against the order in a writ Petition directed against the order of this Tribunal allowing amendment of this petition). Their Lordships say that "when once the Election Commission decides to refer the matter to the Tribunal and the matter is referred to the Tribunal, it is not open to the Tribunal to go behind the order of the Commission." We may add that this matter has since been concluded by the judgment of his Lordship Govinda Menon, J., in Writ Petition No. 671 of 1953 wherein he has held that the two petitions are but one in the eye of law and could be enquired into. We have however dealt with the matter at some length, as elaborate arguments were addressed to us on the point.

18. For all these reasons, the preliminary contentions advanced on behalf of the 1st respondent cannot prevail and have to be overruled. We shall now proceed to consider the three objections raised by the petitioner to the validity of the election of the 1st respondent. Before reaching a final decision on those matters we gave notice to the 1st respondent and his election agent R.W. 6, why they should not be named in accordance with the provisions of Section 99 of the Act, as there were *prima facie* grounds for the issue of the notice. Both of them appeared in answer to the notice and cross-examined some of the petitioner's witnesses (already examined before the Tribunal) and the 1st respondent also examined fresh witnesses in his defence (R.Ws. 14 to 19).

19. One of the grounds on which the election of the 1st respondent is assailed is that he employed persons for payment in connection with the election in violation of the provisions of law relating thereto. This ground is rested mainly on the statements contained in Part B of Ex. A-1, the return of election expenses, wherein seven of the eight persons mentioned in it are described as propagandists and on the recitals to a similar effect contained in Exs. A-4 to A-9 and A-11. Though in the petition it is pleaded that those persons really acted as clerks, this aspect is not now pressed and nothing turns on this. The line of defence now adopted on behalf of the 1st respondent is that they are mere coolies employed to do odd jobs like pasting notices on walls, exhibiting placards, distributing pamphlets and the like. This plea has not been specifically taken in the written statement of the 1st respondent and the answer contained there is that he did not employ any clerk or propagandist in violation of any rule or law. P.W. 2, Ramasami, R.W. 5, Devaraj, and R.W. 12 Manasiah are three of the persons mentioned as propagandists in Ex. A-1, the return of election expenses. P.W. 2 has been examined on the side of the petitioner. He says that he did propaganda on behalf of the 1st respondent and being a Harijan canvassed the Harijan voters in several villages. He further states that Dharman Koil Pillai and Ratnam, two others whose names find a place in Ex. A-1, worked like him on behalf of the 1st respondent. Though the suggestion in his cross-examination is that he was a cooly—this is denied by him—the question put to him in cross-examination with regard to the other two is that they were honorary and not paid workers, which certainly is not correct, as remuneration has admittedly been paid to them. (*Vide* Ex. A-1 Part B and the vouchers Exs. A-5 and A-8). His evidence is sought to be discredited on the ground that he has come forward to support the petitioner because of his appointment in the District Board service by Sri Adhimoolam (formerly President) between whom and the 1st respondent there is no love lost. This is denied by him and we do not think that there is any basis for the suggestion. P.W 9, Sellathurai Vallikutti who says he worked for 1st respondent gives evidence that Dharman Koil Pillai did propaganda work on behalf of 1st respondent and that notices of the type of Ex. A-37 were distributed by him. He is the nephew of R.W. 1 Perla Nadar who is admittedly a sympathiser of the 1st respondent. He says that Ex. A-35 and Ex. A-36, circular letters sent by 1st respondent, were addressed to him and he accordingly worked for the 1st respondent. He is a man of means and his evidence looks probable. That he entered into a bet with his cousin, Rajah Vallikutti as regards the result

of the election and agreed to give away his ring if the petitioner lost and 1st respondent succeeded, would not show that he was a supporter of the petitioner or was interested in him. It was only a political prophecy on the eve of the counting which turned out to be incorrect. Ex. A-37 shows that Dharman Koil Pillai was advertised to be one of the speakers at the meeting announced in it and that is certainly strong proof that Dharman Koil Pillai was capable of doing and did propaganda work on behalf of the 1st respondent. The latter when shown Ex. A-37 would say that he is not aware of any such notice and did not know whether such a meeting took place or not. P.W. 17 the Manager of the Sakthi Press supports P.W. 2 and says that the latter was a propagandist. There is then the evidence of P.W. 20 Jayapandia Nadar that Ramam used to address meetings in support of the 1st respondent. P.W. 26 the petitioner of course gives evidence in support of his case. As against this, there is the evidence of R.W. 5, Devraj, R.W. 12, Manasiah and R.W. 13 the 1st respondent that the word "Propagandist" in the return of Election expenses and vouchers is only a misdescription and that all they did was to distribute notices and paste posters. When confronted with Ex. A-9 and Ex. A-4 the vouchers executed by them R.W. 5 would say that the recital that he received money for doing propaganda is wrong and R.W. 12 would state that the word 'propagandist' was used only to indicate work of the nature referred to by him. The explanation is hardly convincing. The non-examination by the 1st respondent of Dharman Koil Pillai whose name looms large as a propagandist and who is mentioned as one of the speakers in Ex. A-37 is also significant. The evidence on the side of the petitioner is probable and we have no hesitation in accepting the same in preference to that on the side of the 1st respondent. The admissions contained in Ex A-1 and the vouchers Exs. A-4 to A-9 and A-11 clearly establish that the seven persons were employed as propagandists for remuneration. The present explanation that they are but coolies seems to be but an attempt to wriggle out of an awkward situation and carries no conviction. R.W. 5 is a B.Com., and it is too much to say that he and others who are also literates were employed on manual work though persons of the type of P.W. 2 might have been asked to do that also. Our finding therefore is that the seven persons described as propagandists in Part B of Ex. A-1 were in fact propagandists and more employed as such for payment.

20. Now what is the legal effect of employing propagandists for payment? It is urged on the one hand on behalf of the petitioner that even if they were coolies, and more so if they are propagandists, their employment for payment is a major corrupt practice which avoids the election. It is urged on the other hand on behalf of the 1st respondent that there is no legal bar to the employment of paid propagandists. Section 77 of the Act provides that the maximum scales of election expenses at elections and the numbers and descriptions of persons who may be employed for payment in connection with elections shall be such as may be prescribed. Rule 118 of the Rules framed under the Act says that "no person other than, or in addition to, those specified in Schedule VI shall be employed for payment by a candidate or his election agent in connection with an election." Leaving out of consideration the personnel that may be employed for purposes of polling, Schedule VI permits the employment of (1) one election agent, (2) one counting agent and (3) one clerk and one messenger. If the number of electors on the electoral roll of the constituency exceeds 75,000 an increase in the number of clerks and messengers is permissible. It may be useful at this stage to refer to the corresponding provisions of the English Acts. Section 17 of the Corrupt and Illegal Practices Prevention Act, 1883 dealt with this matter. Under that section no person shall, for the purpose of promoting or procuring the election of a candidate at any election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except as mentioned in the first or second parts of Schedule 1 to the Act or so far as payment is thereby authorised. Section 17 has two branches, one as to the persons to be employed (Part I of the Schedule) the other as to the expenses to be incurred (Part II of the Schedule). Some of the expenses enumerated in the schedule necessitate the engagement or employment of certain persons and in such cases, unless otherwise illegal, the employment was held to be legally justified. The section and the schedules have been the subject matter of consideration in numerous English Cases and it has been held that it is illegal to employ for payment canvassers [Stepney (1892) Day's El. Cas. 119] or persons to keep order at meetings [Ibswish (1886), 4 O'M. & H. 72] or "workers" [Barrow-in-Furness (1886), 4 O'M. & H. 78]. See page 398 of Rogers on Elections, Volume II 18th Edition. In Halsbury's Laws of England, Volume XII (1910 Edition) paragraph 389 the law is stated thus. "A speaker must not, therefore for the purpose of promoting or procuring the election of a candidate at an election, be engaged or employed to speak in consideration of a payment or promise of payment, nor must a canvasser be engaged to canvass for such purpose and on such terms". The general and leading purpose of Section 17, it has been observed, is to keep down expenditure by

prohibiting the employment of a larger number of persons than are mentioned in the schedule. The rigour of the law has been mitigated in England by the enactment of the Representation of the People Act, 1949. Besides setting a limit to the total amount of expenditure which may be incurred and prohibiting the employment of paid canvassers, the restrictions on the number of capacities of persons that may be lawfully employed have all been lifted. The limit on the total expenditure is a sufficient safeguard and it is for our Legislature to consider whether a simple rule as the one now in force in England may not be enacted here also, especially in view of the difficulties to which the interpretation of Section 77, Rule 118 and Schedule VI gives rise

21. Turning now to the above provisions, a strict and narrow construction of them would seem to lead to the conclusion that even the employment of coolies in connection with the elections is prohibited for they do not come within the description of persons mentioned in Schedule VI. But that would lead to startling results. Surely a candidate at an election will necessarily have to hire labour for doing such work as pasting notices, affixing posters, and distributing election propaganda. It is too much to expect that he could secure voluntary unpaid agency for those purposes. Probably the difficulty in the interpretation of the present provisions can be solved by holding that the employment of such persons is not *directly* in connection with the elections but only incidentally or remotely connected with them. We do not however wish to express any final opinion on the matter as in view of our finding that the persons employed by the 1st respondent are propagandists and not coolies (mazdoors), it becomes unnecessary to decide whether coolies are within the prohibition or not. But there can be no doubt in view of the language of Section 77, Rule 118 and Schedule VI—and in the light of the law that previously obtained in England—that the employment of paid propagandists is prohibited and comes within the mischief of Section 123(7).

22. The learned advocate for the 1st respondent drew a distinction between persons employed "in connection with the election" and those employed "in connection with the candidature" and according to him, what the law regulates is the number and capacity of persons that may be employed for payment in conection with the election and there is no limit either to the number or capacity of persons that might be employed in connection with the candidature. He would construe the former words as equivalent to "in connection with the conduct and management of the elections" and the latter expression as synonymous with "in promoting or procuring the election of the candidate". His contention is that the employment of paid propagandists being for the latter purpose does not come within the ban. He concedes that the limit of expenditure under both heads should not exceed Rs. 8,000. To our mind it appears that the distinction is not real and cannot be sustained. The words "in connection with the elections" are of wider import but certainly include candidature as well. Expenses incurred in promoting or procuring the election of a candidate do form part—and probably a primary part—of the expenses in connection with the election. A close analysis of the relevant provisions of the Act and the Rules will reveal that the distinction has no basis. Section 44 of the Act contemplates the maintenance of accounts *in connection with the election* and Rule 117 says that no expense shall be incurred on account of or in respect of the conduct and management of an election in excess of the maximum amount specified in Schedule V, which in the present case is Rs. 8,000. If the interpretation contended for were right, then there would be no obligation on the part of an election agent to maintain accounts of amounts spent for promoting or procuring the election of the candidate and there would be no limit to the amount that might be spent for the said purpose. The maximum prescribed would become infructuous and useless and the purpose of laying down a maximum to the limit of expenditure at an election would be frustrated. Schedule IV which relates to the return of election expenses contemplates the inclusion of expenses incurred in connection with the candidature also [see paragraphs 2(a), 2(d) and note 1]. If they do not form part of election expenses which is the same thing as expenses incurred in connection with the election and if they are not regulated by the Act and the Rules and no limit is set to them why should they find a place in the return? If we turn to Section 17(1) of the Corrupt and Illegal Practices Prevention Act, 1883, the language employed there is "no person shall for the purpose of promoting or procuring the election of a candidate be engaged or employed for payment" etc. That would mean that the English and the Indian enactments are at cross-purposes and that what the English Law forbade our law allows and our law forbids what the English Law allows It is needless to pursue the matter further. We have no doubt that the law prescribes both the maximum amount of expenses and the number and category

of persons that might be employed for payment in connection with an election which expression includes candidature as well and a paid propagandist for promoting or procuring the election of a candidate cannot be employed.

23. On this aspect it may be convenient to consider here the contention of Mr. Selvaraj, the learned advocate for R.W. 6, the election agent. He would contend that the term "election" refers solely to the proceedings on the date of the poll and that therefore there is no restriction as regards either the number or the category of persons that might be employed for payment by a candidate on other occasions or for other purposes. This contention is totally against the language and intendment of the relevant provisions. Schedule VI refers to the appointment of an election agent and counting agent and Section 40 prescribes that every person nominated as a candidate shall before the delivery of his nomination paper appoint in writing an election agent and the duties of an election agent begin even immediately. The duties of a counting agent begin later than the day of the election and it is thus clear that the appointments contemplated by Rule 118 do not relate merely to the conduct of affairs on the day of polling but are more comprehensive and wider in scope. Such a narrow construction sought to be put on the term "election" has been expressly negatived by the Supreme Court in Ponnusami *vs.* Returning Officer, Namakkal (1952) I.M.L.J. 775 where it was held that the word "election" has been used in a wide sense in Part 15 of the Constitution, "that is to say, to connote the entire procedure to be gone through to return a candidate to the Legislature," and the same considerations apply to the connotation of the term in the Act. There is therefore absolutely no merit in the contention that there is no contravention of the Act or the Rules, if any persons other than or in greater numbers than those mentioned in Schedule VI are employed for payment for purposes unconnoted with the actual poll.

24. The next argument advanced on behalf of the 1st respondent is that the words "for payment" means for making payment and that what Schedule VI specifies and limits is the persons who can be employed for making a payment and not those who can be engaged for payment or remuneration. Support is sought to be derived for this position from the covenant for reimbursement found in the form of appointment of election agent (Form No. 5-A). That will not however lead to the conclusion that the persons contemplated by Schedule VI are persons authorised and employed to make payment. The Election Agent is the person who is expected to make payments on behalf of the candidate and hence the form of his appointment contains a clause for his reimbursement. No such clause is found in the form (Form No. 6) relating to the appointment of polling and counting agent. On a plain reading of Schedule VI together with the relevant provisions it is difficult to escape the conclusion that what is prohibited is the employment of persons for remuneration other than those specified therein. Part I of the First Schedule of the Corruption and Illegal Practices Prevention Act, 1883 deals with the "persons legally employed for payment" and part II is headed "Legal expenses in addition to expenses under Part I". Paragraph 7 of Part I speaks of "any such paid election agent, sub-agent, polling agent, clerk and messenger". All this leaves no room for doubt that the restriction relates to paid employees. And there is no reason to construe the Indian Enactment differently from the English one. We are fortified in our conclusion by the decision of the Election Tribunal, Patiala, reported in the *Gazette of India Extraordinary*, Part II, Section 3, No. 45, dated 21st February 1953, where it has been held that except for the persons specified in Schedule VI a candidate is not authorised to employ any other person for payment for any kind of work in connection with his election.

25. Yet another argument advanced on behalf of the 1st respondent on this branch of the case is this and it applies also to the objection that the amount of expenditure has exceeded the statutory limit. It is contended that the incurring of expenditure or the employment of a person in contravention of the provisions of Chapter III of Part VII relating to Electoral Offences would alone amount to a corrupt practice within the meaning of Section 123 sub-section 7. The reason urged is that being a corrupt practice there must be an element of corruption or criminality about it. This contention is to ignore the plain words found in Section 123(7). That sub-section refers to the contravention of the Act or of any rule made thereunder. It therefore includes in its scope Rules 117 and 118 as well. There is no warrant to put a restricted interpretation on the language of Section 123(7) and to read words, which are not there, into that sub-section

**26. A somewhat allied argument urged on behalf of R.W. 6, the Election Agent, is that in the absence of a corrupt motive, the employment of persons though in contravention of Schedule VI would not be a corrupt practice within**

the meaning of Section 123 of the Act. It is further urged that where employment is made in good faith or as a result of inadvertance it will not amount to a corrupt practice. Reliance is placed in this connection on the statement of law contained in paragraph 802 of Halsbury's Law of England, Volume XII (1910 Edition). As regards the first branch of the contention, it may be noted that treating undue influence, bribery and personation are alone corrupt practices under the English Act and illegal practices, illegal payment, employment and hiring are put in a category by themselves. Our Act makes a departure and clubs them all together under one head and they are all deemed to be corrupt practices for the purpose of the Act. (See the opening words of Section 123.) Section 123(7) which relates to illegal expenses and illegal employment, nowhere says that a corrupt or a *mala fide* intent is an essential ingredient of the said corrupt practice. Good faith and inadvertance is an excuse and exception authorised by Statute in England and the passage in Halsbury referred to above is only a reproduction of Section 23 of the Corrupt and Illegal Practices Prevention Act, 1883 which runs as follows:

"Where, on application made, it is shown to the High Court or to an election Court by such evidence as seems to the Court sufficient—

(a) that any act or omission of a candidate at any election, or of his election agent or of any other agent or person, would, by reason of being a payment, engagement, employment, or, contract in contravention of this Act, or being the payment of a sum or the incurring of expense in excess of any maximum amount allowed by this Act, or of otherwise being in contravention of any of the provisions of this Act, be put for this section an illegal practice, payment, employment, or hiring; and

(b) that such act or omission arose from inadvertance or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and

(c) that such notice of the application has been given in the county or borough for which the election was held as to the court seems fit;

and under the circumstances it seems to the Court to be just that the candidate and the said election and other agent and person, or any of them, should not be subject to any of the consequences under this Act of the said Act or omission, the Court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission."

It may be noted that the section contemplates application being made to the High Court or to an election court and empowers the said court in certain circumstances to make an order excepting what would otherwise be an illegal act or omission from the provisions of the Act. While Section 22 of the English Act dealing with another authorised excuse and exception has been practically reproduced in sub-section 3 of section 100 of our Act, the provisions of Section 23 do not find a place in our Statute. In the absence of such provisions, considerations arising under Section 23 of the English Act cannot enter in the determination of questions arising under Section 123 of the Act. As already stated, Section 123(7) is plain and unambiguous in its terms and nowhere postulates the existence of a corrupt motive, or the absence of good faith, or wilful violation as a necessary ingredient.

27. Our conclusion therefore is that the 1st respondent and his election agent employed propagandists for remuneration in contravention of Rule 118 read with Schedule VI and that such employment is a major corrupt practice within the meaning of Section 123, sub-section 7 of the Act.

28. We now pass on to the next ground of objection to the validity of the election of the 1st respondent. It is urged that the 1st respondent and his election agent R.W. 6 caused to be published and distributed Ex. A-13, a pamphlet containing violent attacks on the personal conduct and character of the petitioner

and that this is a corrupt practice as defined in Section 123(5). Objection is taken in particular to the following four passages in Ex. A-13;

(1) "Kalki goshtiyaridam Kaikkooli petru"

(2) "Ethagaya panjama pathakangalukkum anjatha nenjuramkonda"

(3) Nanban Meganathan avergalippol thun peyarilum M. R. Nathan, Ramakrishnan yendra thanadu punai peyarilum Irumbu, Vathal mudaliyavaikalukkum Chennai Keelpakkam goshtiyarin Kadakshathal licence petru pala laksha roopaikalai abase cheithathai marukka mudiyuma nanban Meganathan avergalal.

(4) Pithalattangalukku pirappidamana menmaithangiya Meganathan avergale.

The 1st respondent and R.W. 6 both deny all knowledge of the printing and publication of Ex. A-13.

29. Two questions therefore arise (1) whether the 1st respondent and R.W. 6 published or caused to be published Ex. A-13, and (2) whether it is a statement of the nature specified in Section 123(5). The first is a question of fact and the second, a mixed question of fact and law.

30. Ex. A-13 purports to be printed in the Hindustan Printing Works, Madras-17. It is a pamphlet issued in the names of one Esudayan Nadar and ten others supporting the candidature of the 1st respondent. It contains an attack, somewhat violent and vituperative, against the petitioner. P.W. 21, Shri Venugopalan, the owner of the Hindustan Printing Works, says that R.W. 6 Sri K. T. Somasundaram, the brother of the 1st respondent, has a cloth shop known as Janakiram Stores next to his press in Pondy Bazaar, Thyagarayanagar, that R.W. 6 had the 8 notices Exs. A-66 to A-72 and A-76 printed in his press, that Exs. A-73, A-74 and A-75 are the carbon copies of the three bills for the printing of the said notices, that R.W. 6 paid Rs. 345 on three different dates (Rs. 50 on 1st January 1952, Rs. 75 and Rs. 25 on 18th January 1952 and Rs. 195 on 22nd January 1952) and that the balance was adjusted by purchase of clothes from the Stores. Ex. A-72 corresponds to Ex. A-13 and the notices Exs. A-66 to A-72 and A-76 all find a place in the office file maintained by P.W. 21. There cannot be much of a doubt that all these notices were printed in the press of P.W. 21. R.W. 6, Sri K. T. Somasundaram, denies having printed any of the notices, or, for the matter of that, anything in the press of P.W. 21 and goes to the extent of saying that he does not know P.W. 21 at all. The 1st respondent in his evidence says that he did not get notices of the type of Ex. A-13 printed and is not aware of any order for printing on his behalf being placed with the press of P.W. 21. R.W. 16, Sri Ponniah, one of the signatories to Ex. A-76 and R.W. 17 Sri Venkatakrishnan, the signatory to Ex. A-70, have been examined to rebut in part the evidence of P.W. 21. They both say that they themselves went to the press and placed the orders and that no one connected with the 1st respondent came with them. R.W. 16 would say that he does not even know Sri K. T. Somasundaram while R.W. 17 states that though he knows him by sight he is not acquainted with him. Evidently, their testimony is intended to show that P.W. 21 cannot be believed when he says that the orders for the printing of Exs. A-70 and A-76 were placed by R.W. 6 and that he must be equally speaking an untruth when he says that the other notices and Ex. A-13 in particular were printed at the instance of R.W. 6. It is difficult to accept their evidence. Admittedly, they did not have their printing work done at any time previously in the Hindustan Printing Works. It is again difficult to accept the story that they felt a sudden urge on the eve of the election to issue pamphlets supporting the 1st respondent because they were deeply impressed with the work of the 1st respondent in the Legislative Assembly and outside on behalf of the country and his constituency. R.W. 8's evidence is that from a close reading of the newspapers he came to know of the good work done by the 1st respondent and therefore felt impelled to issue Ex. A-76 supporting the candidature of the 1st respondent. Does that mean that the 1st respondent was the only member of the Legislature who impressed him, for he says that he did not issue a notice supporting any other candidate during the Elections in 1952? He would say that when he went to one Sami Nadar's house for arbitration, the urge came upon him suddenly and he and Samia Nadar drafted the notice, went to the press and placed the order. R.W. 17, a resident of Mylapore, would have it that because the presses at Mylapore had heavy work during the time of the elections, he placed the order for printing with this press. It may be noted that these persons are not residents of Thyagarayanagar, though of Madras, and had not at any time printed anything in this press. The authors of the other pamphlets except Ex. A-71 all belong to the Tirumelveli district and how did they all stumble on this printing press at Madras to have their job done? It is clear to

any discerning mind that because R.W. 6 had his place of business near this press and the orders were placed either by or through him, all these pamphlets happened to be printed at this particular press. Both R.W. 16 and R.W. 17 would state that bills or receipts were issued by the press in their names, but they have not been produced. It might well be that after the lapse of several months they did not preserve them but what is significent and tells against their story is the admission that they never made any attempt to search for those documents. If really bills had been issued in their names, P.W. 21 would be running a grave risk of exposure by their production. They would both of them say that they sent the notices through messengers to the constituency for distribution. It is difficult in the circumstances to accept their evidence.

31. The positive evidence on which reliance is placed by the petitioner to establish the connection of the 1st respondent and his election agent with the printing of Ex. A-13 is that of P.W. 21. The manuscripts of the notices have not been produced and the explanation of P.W. 21 is that the manuscripts are usually destroyed after 2 or 3 months. P. W. 21 got the lawyer's notice with regard to the printing of Ex. A-13 only on 26th May 1952 (vide Ex. A-81, the postal acknowledgment) and it could well be that the original was destroyed even before the date of the receipt of the notice. No signatures have been obtained in the bill books and the orders were, according to P.W. 21, placed by R.W. 6 though the notices were issued under other names. These circumstances warrant a close and careful examination of the evidence of P.W. 21, but there can be no doubt that his evidence is true. He is a totally disinterested person and there is absolutely no reason why he should enter into a conspiracy with the petitioner and others against the 1st respondent. The suggestion is that he has been promised a printing press by Sri S. B. Adityan, the Proprietor of "Thanthi" in consideration of his giving evidence in favour of the petitioner a suggestion which is flatly denied by him. The story of R.W. 6 that he does not even know P.W. 21 though his stores and the press are very near each other is entirely unworthy of credence. The genuineness of Exs. A-73, A-74 and A-75 carbon copies of bills found in the bill books is beyond all suspicion. The bills are all either in the name of Janakiram Stores which admittedly belongs to R.W. 6 or in the name of R.W. 6 himself. That the bills do not mention the particular notices to which they relate by name has no significance or consequence for the case of R.W. 6 is that he never printed anything in the Hindustan Printing Works. There is the evidence of P.W. 21 that the bill Ex. A-75 relates to the notice Ex. A-13 (which is a copy of Ex. A-72) and the bill bears the date 8th January 1952. Admittedly it was on that date that R.W. 6 left Madras for Tirunelveli. That all these bills are in the hand of the foreman will not render the evidence of P.W. 21 that he is personally aware of the placing of the orders improbable. That the bills do not bear *printed* numbers cannot support the suggestion in the further cross-examination of P.W. 21 that the original copies might have been destroyed by the foreman and other bills bearing the *same* numbers issued by him. For one thing, the bill book shows no signs of tampering; and what was the motive for the foreman even in January 1952 to introduce false bills in the name of R.W. 6? We have no doubt that the bill book of which Exs. A-73, A-74 and A-75 form a part is above all reproach and the testimony of P.W. 21 supported as it is by Exs. A-73, A-74 and A-75 is entirely true. Reference may next be made to Exs. A-77, A-78 and A-79 the entries in the cash book of P.W. 21 showing payments by R.W. 6. Of course, if the account book stood alone, it may not be proper to come to an adverse conclusion against the 1st respondent and R.W. 6, but in the light of the probabilities and other circumstances in the case, the account books and the entries as to payments by R. W. 6 appear to be genuine. The absence of any corresponding entries in Exs. B-15 and B-16, the day-book and ledger of R.W. 6, will not disprove the payments. Admittedly, monies paid by R. W. 6 to 1st respondent have not been entered then and there in the accounts. The amount, having been spent on behalf of the 1st respondent for purposes of the election, might naturally not find a place in the shop accounts and may have been dealt with as part of the election expenses incurred by him as election agent. Indeed, in one portion of his evidence he says that he was maintaining accounts for the election expenses of the 1st respondent and that they were written under his supervision though not by him. Those accounts are certainly not before the Court. If he intended to refer only to Ex. B-19 which admittedly is written by another brother Palpandia Nadar the absence of any entries therein relating to the printing of these pamphlets is of no consequence, for, as will be shown later, Ex. B-19 cannot be genuine. P.W. 21 would say that the balance of Rs. 187 was partly adjusted by the price of cloths supplied by R.W. 6 to his employees and the rest of the amount was remitted. There is no entry regarding this in the account book, but it is explained by the witness (P.W. 21) that the adjustment was in April 1952 or so, subsequent to the period to which it relates.

32. There are a few circumstances which indicate and render highly probable that Ex. A-13 must have been printed at the instance of the 1st respondent and his election agent. The plain purpose of Ex. A-13 is to compare the claims of the two rival candidates, to commend the 1st respondent to the choice of the electorate and to appeal to the voters to cast their votes in favour of the 1st respondent. It is a pamphlet manifestly issued on behalf of the 1st respondent. It is too much to suppose that the petitioner got such a notice printed with a view to enable him to present the election petition. It is admitted by 1st respondent himself that some at least of the persons in whose name Ex. A-13 purports to be issued—Sri Selvaraj, Sri Arumugha Pandian and Sri Kandasami Pandian—are his sympathisers and workers. There is a reference in Ex. A-13 to the purchase of a car by the 1st respondent (evidently M. S. Z. 4173) and it is mentioned that the price of the car was partly found by borrowing from the Commercial Credit Corporation by R.W. 6 a fact admitted by him. Ex. A-13 should therefore have been drafted only by one having an intimate knowledge of the affairs of R.W. 6 and the 1st respondent. The petitioner who felt aggrieved by the publication of Ex. A-13, issued a notice through his lawyer to the 1st respondent, P.W. 21, Sri Selvaraj, Sri Kamaraj Nadar and several others. Ex. A-80 is the office copy of the said notice and the issue of the notice is proved by P.W. 27 Sri C. Ramaswami Ayyar, an advocate of Tuticorin. The notice issued to the 1st respondent has not been served on him personally but has been received by another (the name is not quite clear)—See Ex. A-84, the postal acknowledgment. The connection between the recipient of the notice and 1st respondent has not been established and it is difficult to say that the notice intended for him must have reached his hands. P.W. 21 says that on receiving notice he contacted the 1st respondent and the latter advised him to remain quiet. This is denied by the 1st respondent. Whatever that be, he admits that Sri M. S. Selvaraj, a close associate of his, told him that he had received a registered notice claiming damages for libel and that he (1st respondent) advised him to send a reply. He of course says that Selvaraj did not mention the details of the notice—the person who issued it or the persons to whom it was issued). Ex. A-80 shows that the notice was addressed to 14 persons including the 1st respondent and it is difficult to believe that Sri Selvaraj did not bring this to the notice of the 1st respondent or that it did not transpire in the course of their conversation. It is highly probable that the 1st respondent must have had knowledge of the issue of the notice and his omission to send a reply disowning responsibility is sure indication that his present case is not true.

33. There is a large volume of evidence on the side of the petitioner that Ex. A-13 was distributed on the eve of the election by the 1st respondent and his agents. P.W. 6, the village munsif of Megnanapuram, P.W.9 Sri Sellathurai Vallikutti, P.W. 13 Sri Thangapandia Nadar, P.W. 20 Sri Jayapandian, all give evidence, besides the petitioner, about the distribution of Ex. A-13 some time before the date of election. We leave out of account the evidence of P.W. 7, whose antecedents are not satisfactory. We equally eschew out of consideration Ex. A-99, a rejoinder by two of the persons whose names find a place at the end of Ex. A-13 that their names have been added without their consent in the said notice published two days before 12th January 1952, as it has not been legally proved. P.W. 9, who, as already stated, is a close relation of R.W. 1, a staunch supporter of 1st respondent, and worked on his behalf during the elections, says in particular that he received 1000 copies of Ex. A-13 and distributed them and that the 1st respondent himself did likewise at Megnanapuram. P.Ws. 6, 9, 13, and 20 all appear to be respectable and disinterested persons and no acceptable reason has been shown why their testimony should not be believed. That P.W. 13 and Kandasami, the worker on behalf of the 1st respondent, are not on friendly terms, would not have induced P.W. 13 to speak falsely against the 1st respondent. We have already ruled out the suggestion that P.W. 9 is a partisan of the petitioner. The probabilities again are in favour of their testimony. Whether Ex. A-13 was printed by R.W. 6, the election agent, as we have held, or by some one who was interested in the 1st respondent, it must have been only with a view to their distribution amongst the voters. That the petitioner did not issue a reply is explained by the fact that the publication being in the nature of a parting shot on the eve of the election, he could hardly had any interval of time to issue a reply. We have therefore no hesitation in accepting the evidence on the side of the petitioner and coming to the conclusion that R.W. 6, the election agent had the notice Ex. A-13 printed and that he, the 1st respondent and their agents published the same.

34. We have so far discussed the question of the authorship and publication of Ex. A-13. To bring the statements contained therein within Section 123(5), the following conditions must be satisfied: (1) There must be a statement of fact as opposed to an expression of opinion. The mere statement of a defamatory

opinion unless coupled with the grounds upon which it is formed, is not a statement of fact. (2) The statement of fact complained of must be untrue. (3) The statement of fact must be in relation to the personal conduct and character of the petitioner. The following observations of Gibson, J. in North Louth (1911) 6 O'M & H 162 are very pertinent in this connection. "A politician for his public conduct may be criticised, held up to obloquy; for that the statute gives no redress. But when the man beneath the politician has his honour, veracity and purity assailed he is entitled to demand that his constituents shall not be poisoned against him by false statements containing such unfounded imputations." (4) The 1st respondent and his election agent must either believe the statement to be false or must not believe it to be true. (5) The statement must be one reasonably calculated to prejudice the prospects of the petitioner's election.

35. We shall now proceed to consider whether the passages complained of satisfy the above tests. The statement in the first passage is that the petitioner having received bribes from the Kalki Goshti (group) brought a no-confidence motion against Sri Kamaraja Nadar, the leader (of the Tamil Nad Congress). The learned advocates appearing for R.W. 6 would contend that the expression ( ) ("Kai Kooll") does not necessarily mean 'bribe'. Mr. Satagopachari wanted us to construe the expression as mere 'hire', while Mr. Selvaraj takes up the position that the words ( ) ("Kai Kooll petru") mean only 'at the instance of Kalki Koshti' and not of his own volition. The word ( ) ordinarily has a bad odour about it and is commonly understood as bribe. The petitioner in his evidence says that that is the meaning of the word and there was no cross-examination on the point, and in the context there can be little doubt that the expression means bribe. It may possibly be argued, as was feebly suggested by Mr. Selvaraj, that this relates to the petitioner's conduct *qua politician*. There is indeed no sharp dividing line separating what is personal from what is political or otherwise. A statement may very well involve both imputations and if it affects the veracity and honour of the candidate as well as his political character, then it is within the mischief of the Act. (See North Louth, 6 O'M & H 158; also the observations at page 86, Parker's Election Agent and Returning Officer, 5th Edition). In our opinion, the statement under consideration has reference to the personal character and conduct of the petitioner as well, and charges him with dishonesty and brings him into contempt and therefore comes within the Act. In the second of the above passages, the petitioner is described as a person "having a determined mind not afraid of the five great sins of whatever kind". The five great sins are, according to accepted notions (probably with some variations) and the evidence of the petitioner; untruth, gambling, theft, lust and drink. In the fourth passage, the petitioner is addressed as the birth place of frauds. The question to be determined is: what in the circumstances is their real meaning, considering the occasion of the publication, the persons publishing, the person attacked and the readers intended to be addressed. There can be no doubt that these passages contain an attack on the personal honour, honesty, integrity and veracity of the petitioner and if the other conditions are satisfied, constitute a corrupt practice which will vitiate the election. In St. George's (1896) 5 O'M & H 104, a statement charging the candidate with bribery, cowardice and lying was held to be a statement of fact within the corresponding provisions of the English Act (See page 87 of Parker's Election Agent and Returning Officer, 5th Edition).

36. The third passage is still worse. The petitioner is alleged to have obtained permits of various kinds in his name and sometimes in false names and amassed a large fortune, by dishonest and disreputable means ( ) is the word used and in common parlance it carries a bad significance. We are unable to agree with the contention of Mr. Selvaraj that the word was not intended to convey any bad connotation especially if we bear in mind the context in which it is found. Our attention was drawn to the following cases reported in Sen and Poddar's Indian Election Cases. (1) Hoshiarpur West Muhammadan Constituency (page 399) where it was held that the words "traitor to Islam" related to the public and political conduct of the candidate. (2) North Gaya General Rural Constituency (page 641) where the term 'Dalal' was held to refer only to public conduct and character following another case where the word 'Deshdrohi' was construed likewise and (3) the Western Towns Sikh Urban Constituency (page 854) where the statement that the candidate was an agent of a party which was the "King of Gundas, Badmashes, Shaitans and the swallower of the monies of Gurdwaras" was held not to come within the purview of the corresponding provisions of the Rules formerly in force. The ruling proceed on a construction of the particular words used and the circumstances and context in which they were used and afford no universal guide. We may add that in

the Hissar North General Constituency case (page 374) cited on behalf of the 1st respondent the statement that the candidate was a Musalman, a drunkard and a bribe-taker was assumed to be one which came within the mischief of the Rules, though on a question of fact it was found that no such publication was made.

37. The petitioner denies the various allegations against him contained in the above passages. No attempt has been made on behalf of the 1st respondent and R.W. 6 to show that the petitioner brought the no-confidence motion against Sri Kamaraja Nadar out of any corrupt motive or to justify any of the opprobrious epithets hurled against him in the second or fourth passage. In fact, the 1st respondent, while disowning all connection with Ex. A-13, admits that he cannot produce any proof in support of the averment in Ex. A-13 that the petitioner is guilty of the five major sins and that he cannot justify the characterisation of the petitioner as ( ) (("Pithalattangalukku pirappidam") by any proof. Some feeble attempt has been made to show that the petitioner obtained permits in his as well as under assumed names. The evidence does not amount to anything more than this, namely that the petitioner obtained permit for the import of 5,000 tons of scrap iron from Ceylon. Ex. B-2, the agreement, or copy thereof executed by the petitioner to the Iron and Steel Controller, Exs. B-5 and B-6, two telegrams received by the petitioner do establish that the petitioner obtained a permit for the import of scrap iron and thus is admitted by the petitioner himself. He has his own version as to the circumstances that led to the application for the permit, but though that is not very convincing, nothing of importance turns on this. He would however state that he surrendered the permit and did not actually import any quantity of scrap iron. That again is a matter in controversy but there is nothing to show that what he says is untrue If really he had imported scrap iron in such large quantities, better evidence could easily be forthcoming. Even if he did import, there is nothing wrong about it and there is not an iota of evidence nor even a suggestion that the petitioner put the permit to improper use or derived any improper or illegal advantage therefrom. Ex. B-1 is a letter purporting to be written by one A.P.C. Veerabahu Pillai to the petitioner. The petitioner denies having received this letter, but P.W. 25 Doraisami proves that the handwriting of and the signature in Ex. B-1 are those of Mr. A.P.C. Veerabahu Pillai. Admittedly, the said gentleman and the 1st respondent are not on good terms and this letter along with some other documents, according to the 1st respondent, were left by the petitioner in Velu Pillai's shop and were handed over by Velu Pillai to him (1st respondent). The petitioner himself admits having left Ex. B-2 in Velu Pillai's shop. In the circumstances, the genuineness of Ex. B-1 is above suspicion. But it does not advance the case of the 1st respondent to any extent. A reading of that document shows that the petitioner applied for permit in the year 1947 in the name of his friends and had written to Mr. A. P. C. Veerabahu Pillai that considerable amount would have to be spent in obtaining the permit. That letter itself shows that the permits were issued only to approved dealers whose names were found in the books of the Government and hence probably the need for applying in other's names. There is nothing on record to show that the petitioner got the permit. Whatever that be, there is nothing wrong in applying for or obtaining a permit. Only if it had been put to an improper use—of which there is not the slightest evidence in the case with regard to any of the matters alleged—would there be a good cause for pointing the finger of scorn at the petitioner. Ex B-3 purports to be a letter written by the petitioner to Mr. R. Krishnamurti at New Delhi. That makes mention of certain applications for permit and requests the latter to meet the concerned officials and move them in the matter. The 1st respondent says that the signature and the Tamil portion are in the hand of the petitioner, but the petitioner denies the same. We were invited to compare the hand-writing and the signature with the admitted hand-writing and signature of the petitioner. Exs. B-26 and B-26(a) are respectively the Tamil and English signatures of the petitioner taken in Court. We are not able as a result of the said comparison to come to the conclusion that the hand-writing and signature of the disputed document are those of the petitioner. Exs. B-2 to B-12 are said to have been left with Velu Pillai by the petitioner and handed over by the former to the 1st respondent. Velu Pillai, who was throughout present in Court and admittedly helps the 1st respondent in the conduct of these proceedings, has not been examined. That the petitioner admits having left Ex. B-2 with Velu Pillai will not show that the other documents (Exs. B-3 and B-7 to B-12) were similarly left by him. Again, it is not clear how the original letter happened to be with the writer himself (the petitioner). Ex. B-4 is a letter from the Government of India, Ministry of Food, addressed to the petitioner evidently in answer to a letter of the petitioner. That informs the petitioner that permits for export of onions is issued only to those who did similar business in 1941-42. Exs. B-7, B-8, B-9 and B-10 are letters addressed

by the Government to one Mr. Ramakrishnan of Govindappa Naicken Street, Madras. There is nothing to connect the addressee with the petitioner. Exs. B-11 and B-12 are respectively cholera inoculation certificate and vaccination certificate issued to one M. Nathan. Even if they relate to the petitioner, they are perfectly innocuous documents and throw absolutely no light on the matters in controversy. They contain internal evidence that the person referred to therein is not the petitioner. They are of the year 1948 and the age mentioned there is 38 while the present age of the petitioner is 34. The evidence on record does only show that the petitioner got permit for the import of scrap iron and there is not the slightest evidence to prove that the petitioner obtained other permits as well, that he obtained them in false names or that he made illegal profits out of them.

38. It is necessary at this juncture to refer to one other document (Ex. B-13) on which considerable stress is laid on behalf of the 1st respondent and R.W. 6 with regard to this part of the case. Ex. B-13 is a pamphlet containing a violent denunciation of the petitioner. R.W. 8 (Andiappan) says that he had that pamphlet printed and gave a copy of it to the *ad hoc* committee appointed for the selection of Congress candidates in the Tamil Nad. The obvious purpose of Ex. B-13 is to prevent, if possible, the selection of the petitioner as the official Congress candidate. R.W. 14, Sri Raghunathan, the Office Secretary of the Tamil Nad Congress Committee, and R.W. 15 Sri T. S. Chokkalingam, the Editor of the Dhinasari stated that they saw leaflets like Ex. B-13 at the time of the selection of the Congress candidates in 1951. R.W. 18, Sri S. Chellapandian and R.W. 19 Sri R. S. Arumgham say that at the time of the visit of the *ad hoc* committee Ex. B-13 was circulated. R.W. 19 adds that the petitioner also was present when it was given to the members of the *ad hoc* committee. It is not possible to place much reliance on this gentleman's memory, as he is not able to remember whether notices like Exs. A-51 and A-96 were circulated at the time. There is also the evidence of P.W. 6 that he saw notices of the type of Ex. B-13 after nomination and before the date of election. The petitioner says that he was not aware of the publication of Ex. B-13. It may be taken to be fairly established on the evidence that Ex. B-13 was put into the hands of the *ad hoc* committee which met to select the Congress candidates for the various constituencies. That the petitioner did not issue a rejoinder, assuming that he was aware of Ex. B-13, will not lead to the inference that he admitted the truth of the allegations contained in it and that therefore the statements, contained in Ex. A-13, complained of are true, for he was certainly pressing his claims for selection by the committee and must naturally have repudiated the allegations against him whether they were true or false, if he was aware of them. It is therefore difficult to accept the contention that because of the petitioner's silence the allegations must be assumed to be true. It may further be pointed out that Ex. B-13 refers mainly to the obtaining of permits. The other allegations contained in Ex. A-13 cannot therefore be justified on the basis of Ex. B-13. The petitioner denies that he is guilty of any of the accusations levelled against him in Ex. A-13. Under all the circumstances we accept his evidence and find that the accusations are false.

39. The next question is whether it has been shown that the 1st respondent and his election agent believed them to be false or did not believe them to be true. Though a man's belief and the state of his mind are as much questions of fact as the state of his digestion, yet it is idle to expect direct evidence on the side of the petitioner and they must largely be matters of inference from proved facts. It has already been shown that the statements in Ex. A-13 complained of are absolutely without foundation. That R.W. 8, Andiappan, chose to publish the pamphlet Ex. B-13 will neither establish the truth of the allegations nor induce an honest belief in any reasonable person in their truth. When cross-examined, the 1st respondent had to admit that he had no materials to support the allegations in the second and fourth passages and as regards the charge that the petitioner is a bribe-taker, the 1st respondent relies only on Ex. B-1. That does not show that the petitioner received bribes or that he did so for moving the no-confidence motion against Sri Kamaraja Nadar. As regards the allegation that the petitioner had made immense and illegal profits from permits, the records do not show anything of that sort and cannot lead any reasonably minded person to believe so. The 1st respondent would say that he has got other documents which would justify such an inference but he has not produced them and we cannot but conclude that they are not in existence. That the petitioner did not issue any reply to Ex. B-13 is again no ground for thinking that the 1st respondent and R.W. 6 must have had an honest belief in the truth of the allegations or at any rate did not believe them to be false. In the absence of any proper materials in support of the accusations it must in the circumstances be held that the 1st respondent and R.W. 6 must have believed them to be false or at any rate did not believe them to be true.

40. Next, as to the question whether the statements are reasonably calculated to prejudice the prospects of the petitioner's election, the question is one of their probable effect and not whether they have resulted in actual prejudice. Allegations of the nature found in Ex. A-13, involving as they do, the personal integrity, honesty and character of the petitioner must necessarily prejudice him in the eye of the electorate and deflect votes from him. It is idle to contend as was sought to be done on behalf of R.W. 6, that the passages cannot possibly have that effect. One of the arguments on this aspect of the case is that the mischief had already been done by Ex. B-13 and that no further harm could have resulted from the publication of Ex. A-13. We have already pointed out that Ex. A-13 contains more allegations than Ex. B-13. Besides, a publication of the nature of Ex. A-13, though it be a repetition, just before the day of election, cannot but cause incalculable harm to the petitioner and prejudice him further in the minds of the voters. We have therefore no doubt that the offending passages are just the kind of print which the Legislature intended to visit with penalties and constitute a corrupt practice within the scope of Section 123(5) of the Act.

41. It only remains to consider whether the 1st respondent incurred expenses apart from those mentioned by him in his return, Ex. A-1, and if so, how much. The petitioner relies on them to make out the corrupt practice of incurring expenditure in excess of the maximum allowed by law. It was argued by the learned advocate for the 1st respondent—and numerous authorities were cited in support thereof—that to constitute a false return, a corrupt motive must be shown. The motive may be to omit legitimate expenses from the return where a maximum scale has been fixed or the intention may be to conceal expenditure which would go to prove some other corrupt practice. The argument would hold good if the charge is one of making a false return of expenses which is a corrupt practice as specified in Section 124(4) of the Act. The petitioner however relies on the several omitted items of expenditure not for making out a corrupt practice under Section 124(4) but to establish that the actual election expenses of the 1st respondent far exceeded the maximum and hence the election is void under Section 100(2)(b) read with Section 123(7). The question whether the ingredients of a corrupt practice of the nature specified in Section 124(4) of the Act have been made out does not really arise in the case, but if it does, the answer must certainly be in the affirmative, for the omission of the various items (if established) must certainly be deliberate and intentional.

42. The petitioner has, in his petition and the particulars furnished by him, complained that numerous items of expenditure actually incurred by the 1st respondent do not find a place in the return of election expenses, Ex. A-1, and that these, if included, would bring the total to a figure far above the sum of Rs. 8,000, which is the maximum fixed under the rules. The petitioner has adduced evidence in respect of most of them, but during the course of the arguments, the petitioner's advocate gave up several of the items and confined himself to the following:—

| | Rs. | As. | Ps. |
|---|---|---|---|
| (1) Price of voter's list | 51 | 12 | 0 |
| (2) Deposit for nomination as a Congress candidate .. | 100 | 0 | 0 |
| (3) Difference between the actual total of the vouchers 2 to 74 and that included in the return. .. | 235 | 4 | 0 |
| (4) Printing charges: | | | |
| (a) Shanmugham Press .. | 102 | 9 | 0 |
| (b) Sakthi Press .. | 52 | 0 | 0 |
| (c) Nehru Block (value of) .. | 60 | 0 | 0 |
| (d) Hindustan Printing Works .. | 532 | 0 | 0 |
| (5) Car repairs in Chakrapani Chettiar & Co. .. | 1,235 | 6 | 3 |
| (6) Petrol (bills not included): | | | |
| (a) T. V. Sundaram Ayyangar & Co. .. | 37 | 10 | 0 |
| (b) S. V. O. C. .. | 7 | 9 | 6 |
| (c) Arasan & Co. .. | 124 | 8 | 0 |
| (d) S. P. L., Tiruchendur: | | | |
| MDY 1380 .. | 370 | 11 | 0 |
| MSP. 601 .. | 383 | 7 | 6 |
| Madasami's purchase .. | 11 | 5 | 0 |
| MSP 573 .. | 68 | 4 | 0 |
| PS. 624 .. | 103 | 3 | 6 |

(7) Reasonable hire for cars: (calculated for 50 days at Rs. 30/- per diem) :

| | | Rs. | As. | Ps. |
|---|---|---|---|---|
| MSZ. 4173 Austin | .. | 1,500 | 0 | 0 |
| MSP. 573 Jeep | .. | 2,000 | 0 | 0 |
| MDY. 1380 ,, | .. | 2,000 | 0 | 0 |
| MSP. 601 ,, | .. | 2,000 | 0 | 0 |
| PS. 624 ,, | .. | 2,000 | 0 | 0 |
| 890 ,, | .. | 2,000 | 0 | 0 |
| (8) Cost of maintenance of offices at | | | | |
| (a) Megnanpuram | .. | 400 | 0 | 0 |
| (b) Kulasekharapatnam | .. | 400 | 0 | 0 |
| (c) Thattamadam | .. | 400 | 0 | 0 |
| (9) Loud speaker arrangements for 50 days at Rs. 20/- per diem | .. | 1,000 | 0 | 0 |

43. It therefore becomes unnecessary to consider the evidence relating to other items of expenses and we confine ourselves to a discussion thereof bearing on the above items only. The purchase of the voters' list at a cost of Rs. 51-12-0 is borne out by Ex. A-86, the letter of the 1st respondent and Exs. A-87 and A-88, the Treasury records. It is conceded by the 1st respondent that this amount has been inadvertently omitted in the return and he has no objection to its inclusion.

44. The 1st respondent applied to the Tamil Nad Congress Committee for being nominated as the official Congress candidate for the Sattankulam constituency. As required by the rules framed by the committee he sent a sum of Rs. 500—Rs. 100 by way of application fees and Rs. 400 by way of deposit—[See Ex. A-85(a)]. For reasons which it is unnecessary for us to go into the Congress did not set up any candidate for this constituency and the 1st respondent stood as an Independent candidate. As is usual when the applicant is not selected as a candidate, the deposit of Rs. 400 was according to the 1st respondent refunded to him and the objection to the non-inclusion of this sum is not now pressed. The balance of Rs. 100 has since been returned on 7th October 1953 after the examination of the 1st respondent. This is borne out by the evidence of R.W. 14, Sri Raghunathan and Ex. B-27, the counterfoil of the cheque. The contention of the petitioner is that this sum of Rs. 100 which admittedly had not been returned till very recently forms part of the election expenses and should have been included as such in the return. The answer is that the entire sum of Rs. 500 including the application fees of Rs. 100 would be refunded where no official candidate is set up though where one is set up the deposit of Rs. 400 alone would be returned to the unsuccessful applicant. R.W. 7 Sri L. S. Karayalar, R.W. 14 Sri Raghunathan, (the Secretary of the Tamil Nad Congress Committee) and R.W. 13, the 1st respondent, state so, though they are not able to lay their finger on any particular rule on the point. R.W. 14 is however positive that in the case of the Teachers' Constituency, where similarly the Congress did not set up any candidate, the entire sum of Rs. 500 was returned to the candidate on 5th February 1952 itself. Ex. B-28 the counterfoil of cheque fully bears him out. In the circumstances, it seems to us that the entire sum of Rs. 500 was refundable to the 1st respondent and he was right in not including the application fee of Rs. 100 as part of the expenses, though that amount had not been returned to him at the time of the submission of the return.

45. The next item relates to the expenses covered by vouchers 2 to 74 filed with Ex. A-1. What the 1st respondent has done is to carry the items found in the said vouchers to voucher No. 1 wherein some other items are also found and total them up and carry the total to Ex. A-1 (see Part A page 2 of Ex. A-1). The total thus entered is Rs. 2,177-2-0. The contention of the petitioner is that the amount carried over to voucher No. 1 falls short of the actual total of vouchers Nos. 2 to 74 by Rs. 235-4-0 and that this should therefore be added to the total of Rs. 2,177-2-0. The 1st respondent's advocate has no objection to any of the items so omitted being included but would urge that the amounts covered by vouchers Nos. 5, 9, 10, 12, 13, 28, 31, 32, 45, 46 and 55 aggregating in all to Rs. 514-2-0 should be excluded as they relate to the purchase of tyers and spare parts. The latter contention is not open to the 1st respondent. The matter is not one of pure law. The 1st respondent has himself proceeded on the footing that they all represent expenses incurred in connection with the election and included them as such. If he had taken the plea earlier that their inclusion is the result of a mistake on his part, it would have been possible for the petitioner to show that they have been rightly included and should not now be left out, The 1st respondent has not done so and he cannot now contend that what he has himself included in the return should now be ignored. We find from an actual totalling of vouchers Nos. 2 to 74, that a sum of Rs. 233-6-6 has not been

included in voucher No. 1 and not carried over to the return of election expenses. We accordingly hold that this sum of Rs. 233-6-6 should find a place in the return of election expenses.

46. Before dealing with the other disputed items of expenses it is necessary to refer to Ex. B-19, the election account of the 1st respondent. This document has been the subject of a bitter attack by the petitioner's advocate and it is strenuously urged by him that it is not genuine. Ex. B-19 is not a chronicle of the actual expenses incurred from day to day but merely mentions the advances made to several persons for election expenses. There are no entries corresponding to the figures found in the various vouchers. There is therefore much force in the contention of the petitioner's advocate that if Ex. B-19 was in existence even previously there would have been no difficulty in mentioning the various items of actual expenses and it was because it was written up after the 1st respondent was called on to produce the account that this method of writing accounts had to be resorted to as the 1st respondent was not permitted to look into the return of election expenses and vouchers filed by him before producing the accounts. There are at least two items of debits, Rs. 5 on 27th November 1951 and Rs. 50 on 1st December 1951 in voucher No. 1 which are not found either in the other vouchers or in Ex. B-19. Why the absence of corresponding entries in Ex. B-19, if it was a contemporaneous record of the transactions; wherefrom did the 1st respondent and his election agent get these figures at the time of the preparation of the return? The 1st respondent has no satisfactory explanation and R.W. 6 the election agent says he knows nothing about the accounts which were maintained by another brother Pal Pandian. Pal Pandian has not been examined. There is again no correspondence between the total expenses found in Ex. A-1 and Ex. B-19. Ex. A-1 mentions a sum of Rs. 5,667-0-6 as already paid while the total of the debits found in Ex. B-19 is only Rs. 5,612-4-3. The 1st respondent would say that amuonts paid after 2nd February 1952 may not find a place in Ex. B-19. There was hardly any reason to stop writing the accounts after 2nd February 1952. Ex. A-100 attached to the return of election expenses gives the details of the amounts spent by the 1st respondent in person from 20th November 1951 to 12th January 1952. The total is Rs. 519-0-6 and this is entered in one lump sum at the end on 2nd February 1952 in Ex. B-19. If Ex. B-19 was there already one would expect the expenses to be entered then and there or at least at definite intervels. The 1st respondent himself says that he had Ex. A-100 written from the entries in his dairy or in small slips of paper. He also speaks to Sri Selvaraj (to whom most of the advances have been made) noting the expenses in separate pieces of paper. R.W. 5, Devaraj, who was the manager in the Udangudi office of the 1st respondent says that he was maintaining accounts. These original documents have not been produced. Exs. A-4 to A-11, the vouchers given by the employees of the 1st respondent mention the receipt of salary by them. Ex. B-19 strangely enough does not mention any payments for *salary* but only speaks of payments for expenses. One line of defence that appears to have been thought of originally to the contention of the petitioner that paid propagandists were employed is to deny the payment (see the cross-examination of P.W. 2) and hence it is suggested that Ex. B-19 was written subsequently omitting all mention of payments of salary. There is again no correspondence between the dates found in some of the vouchers and the entries in Ex. B-19. (*c.f.* voucher No. 83 and Ex. A-10 with the entries in Ex. B-19 at pages 4 and 1). This by itself may not amount to much. More important is the fact that Ex. B-19 contains internal evidence of its later creation. In Ex. A-1 (page 2) a sum of Rs. 70 is shown as paid and Rs. 17-12-0 as outstanding to the Oriental Hotel, Sattankulam. Similarly, the sum of Rs. 128-12-0 is shown as paid and Rs. 41-8-0 as remaining unpaid to Surya Vilas Hotel (page 4 of Ex. A-1). When we turn to Ex. B-19 we find that total amounts of Rs. 52-4-0 (Rs. 25 on 1st December 1951, Rs. 12-4-0 on 20th December 1951 and Rs. 15 on 3rd January 1952) and Rs. 87-4-0 (Rs. 25 on 5th December 1951, Rs. 25 on 16th December 1951 and Rs. 37-4-0 on 3rd January 1952) have been entered as paid to the Oriental Hotel and Surya Vilas Hotel respectively. The explanation of the 1st respondent that probably the balances were paid later than 2nd February 1952 and hence were not entered in Ex. B-19 is totally unconvincing. The amounts found in Ex. B-19 fall short in both cases by the amounts shown as unpaid in Ex. A-1. Apart from the fact that the amounts paid do not correspond, it would suggest that because the 1st respondent had but an imperfect copy of some of the entries in Ex. A-1, not knowing what exactly the figures Rs. 70 and Rs. 128-12-0 in Ex. A-1 represented and mistakenly thinking that they were the total amounts of the bills of the two hotels be deducted the unpaid amounts from them and showed the balance only in Ex. B-19 as having been paid to the said hotels. This significant fact, to our mind, shows that the account Ex. B-19 must be a later production. The errors would not have crept in if Ex. B-19 was a true and genuine account. The document itself was not produced immediately it was called for but time

was taken for its production on the ostensible ground that it was at Madras. It is not clear for what purpose it was taken to Madras. The cumulative effect of the various circumstances detailed above leads to the inference that Ex. B-19 cannot be genuine and no value could be attached to the absence or omission of any entries therein in deciding the question whether the disputed items of expenses were in fact incurred or not. The petitioner would however wish us to infer from the fact that Ex. B-19 is not genuine, that the original account books have been suppressed because they will disclose that all the disputed items of expenses were in fact incurred. We are not prepared to make any such large inference and though it is a factor to be taken into account, it would not be right from that circumstance alone to conclude that the disputed items are all true in the absence of clear and satisfactory proof thereof.

47. Now, coming back to the items of expenses, P.W. 1, the manager of the Shanmugham Press, swears that printing work of the value of Rs. 952-9-0 was done for the 1st respondent of which Rs. 850 was paid by the 1st respondent and a balance of Rs. 102-9-0 is still due. This is borne out by Ex. A-58, the ledger maintained by the press. 1st respondent admits the printing, but would state that the rates were high and that, on objection being taken thereto by him, the Managing Director agreed to remit the balance due. This, besides being opposed to the admission of counsel made on the first day of the examination of P.W. 1 that the amount was due but has been included in the return, does not look probable. The 1st respondent has not examined Sri Somayajulu, the Managing Director and has not obtained any document to show that his account has been closed. We are not prepared to accept the suggestion in the further cross-examination of P.W. 1 that the 1st respondent and Sri Somayajulu have since fallen out. There is no whisper of it in the evidence of the 1st respondent. P.W. 1 says that the rates were not excessive and that if any remission had really been made it would have been carried to the accounts. The accounts, according to the witness, still show that Rs. 102-9-0 remains outstanding. We are not prepared to accept the evidence of R.W. 13 on the point and we hold that Rs. 102-9-0 has yet to be paid to the press and forms part of the actual printing charges incurred.

48 The next item relates to a sum of Rs. 52 the printing charges for work done in the Sakthi Press. P.W. 17 the Manager of the Sakthi Press at Udangudi says that as per bills Exs. A-50, A-52, A-53 and A-56, four notices were printed in their press on different dates, that Ex. A-51, A-54 and A-57 were three of the said notices, that the orders for the last three notices were placed by 1st respondent's workers. P.W. 28 who was the polling agent of the 1st respondent in one of the polling booths speaks to having signed the manuscript of Ex. A-51 at the instance of the 1st respondent. The 1st respondent denies all knowledge of the printing of the notices and disowns all connection with them. We have no hesitation in accepting the evidence of P.Ws. 17 and 28. The notices are all in support of the 1st respondent. The sum total of the four bills comes to Rs. 52 but P.W. 17 says that a sum of Rs. 4 was written off. We accordingly find that the sum of Rs. 48 paid to the Sakthi Press represents expenses of printing incurred by the 1st respondent and should be added to the printing charges shown by him.

49. Next, as to the cost of the block which was used in printing Ex. A-15 wherein the 1st respondent is seen in the company of the Prime Minister and the Finance Minister. The contention of the petitioner is that the block would cost Rs. 60 and that even if it had been prepared and presented by a friend, its cost should be included in the election expenses. The 1st respondent says that it was prepared by the Editor of the Dhinasari for printing in his paper and given to him free subsequently. R.W. 15, Sri T. S. Chockalingam, formerly the Editor of Dhinasari, supports him. The block not having been made for purposes of the election its use does not entail the inclusion of the cost of its prior preparation—and that for a different purpose—in the election expenses.

50. The last item under printing charges relates to the work entrusted to the Hindustan Printing Works. We have already held that as shown in the bills Exs. A-73, A-74 and A-75, orders for printing were placed in that press by R.W. 6, the election agent of the 1st respondent. The total of the bills is Rs. 532 and that amount should find a place in the election expenses of the 1st respondent.

51. The 1st respondent has effected repairs to and purchased spare parts for his cars MSZ 4173 (Austin) and MSP 573 (Jeep) in Messrs. G. N. Chakrapani Chettiar & Sons. Exs. A-18 to A-29 are the bills relating thereto and the total of the 12 bills is Rs. 1,235-6-3. Of this Rs. 338-2-0 represents the total of the bills from 20th November 1951. All this is spoken to by P.W. 4 an employee of the Firm. The contention of the petitioner is that these repairs having been effected after the announcement of the candidature of the 1st respondent and for the

purposes of the election they legitimately form part of the 1st respondent's election expenses. No direct authority bearing on this question has been cited before us and on principle we do not feel that the repair charges should properly be debited to election expenses. The occasion and the need for the repair might be the impending election but it would be straining the language to hold that the expense was incurred in connection with the election. The repairs would have been necessitated by the normal wear and tear and the benefit of the repairs would be there long after the termination of the election. Different considerations might arise where a car is purchased solely for the purpose of the election and sold immediately afterwards. The present case is not one of that kind. Election or no election, the cars would have to be periodically overhauled and repaired, and the costs thereof cannot be legitimately charged to election.

52. The next two items relate to purchase of petrol and the hire of cars and may be conveniently dealt with together. The 1st respondent owns two cars—MSZ. 4173 and MSP 573. Besides these cars, four other vehicles MDY 1380 and MSP 601 belonging to R.W. 10 Sri Madasami Pillai, MDH 890 belonging to S.N.M.N.R. & Co., and PS 624 belonging to R.W. 1 Sri Peria Nadar were according to the petitioner used by the 1st respondent for election purposes for nearly two months. The case of the petitioner is that the petrol purchased for those cars have not been shown in the accounts and that the price thereof as well as a reasonable hire for the cars—whether in fact they were hired or not and whether they belonged to him or to his friends—should be included in the expenses. The 1st respondent denies having used any other cars except his own for purposes of election save on 20th November 1951, the date of the filing of the nomination paper and would state that the petrol purchased for his cars for election purposes has been fully shown in the accounts and that as a matter of law there can be no expenses by way of hiring when in fact they were not incurred.

53. We shall first take up the question whether the 1st respondent used other cars, besides his, for purposes of election. Evidence has been let in on the side of the petitioner that the two jeeps of R.W. 10 Sri Madasami (MDY 1360 and MSP 601), the jeep of R.W. 1 Peria Nadar (P.S. 624) and that of S.N.M.N.R. & Co., (MDH 890) were so used. P.W. 8 the salesman at S.V.O.C. Petrol bunk, Vannarpet, says that two gallons of petrol were sold to MDY 1380 for Rs. 5-7-0 on 18th December 1951. Ex. A-34 is the carbon copy of the cash bill. P.W. 14 Singaram who was employed under a petrol dealer at Tiruchandur speaks to the supply of petrol on various occasions to MSP 601, MDY 1380 and PS 624. The actual quantity supplied with the dates and other particulars are to be found in his evidence. Exs. A-38 and A-39 are the bill books and they contain copies of the cash bills relating to the sales on various dates. There can be no dispute about the truth of the sales spoken to by P.Ws. 8 and 14 but that does not lead us far. Unless it be shown that the cars were all engaged in the errands of the 1st respondent and petrol was purchased, solely for those purposes, the amount of the bills proved by them cannot be treated as part of the election expenses. For this purpose, the petitioner relies mainly on the evidence of P.W. 6, P.W. 9 and P.W. 13. P.W. 6, the village headmen of Megnanapuram says that the jeeps of R.W. 1 and R.W. 10 plied on behalf of the 1st respondent during the period of election. P.W. 9 Sellathurai Vallikutti has given evidence that MSP 601, MDH 890 and MDY 1380 besides R.W. 1's jeep were used for election work during the entire period. This witness who remembers the registration numbers of these cars had to admit in cross-examination that he could not give the numbers of the cars that plied for the other candidates. P.W. 13 Sri Thangapandia Nadar states that S.N.M.N.R's jeep was used by the 1st respondent for about 35 or 40 days. P.W. 14, Singaram, also says generally that the two jeeps of R.W. 10 and that of R.W. 1 worked for the 1st respondent. The evidence of P.W. 20 Sri Jayapandia Nadar is to the effect that Sri Peria Nadar's jeep. Sri Madasami Pillai's jeep and another jeep (from Sundankottai) were used by the 1st respondent during the period of election. P.W. 28 Sri Arumugha Nainar would state that besides the 1st respondent's jeep, the two jeeps of R.W. 10 and that of his uncle R.W. 1 worked on behalf of the 1st respondent. The petitioner of course speaks in support of his case. As against this, we have the evidence of R.W. 1, Sri Peria Nadar, R.W. 9 Sri Piramuthu and R.W. 10 Sri Madasami Pillai (the ownership of the two jeeps has been wrongly ascribed to him by the petitioner and his witnesses, he being but a driver employed by the owner, one Abu Bucker), the owners or persons in charge of the cars that their jeeps were never lent to or hired by the 1st respondent for election purposes, except once in the case of R.W. 10's jeep. The 1st respondent denies the user of these jeeps. In the voucher filed by the 1st respondent for the purchase of petrol we find some with the Registration numbers MDY 1380, MSP 601, MDH 890 and PS 624 or in the name of R.W. 10 Shri Madasami Pillai (see voucher Nos. 2, 3, 17, 48, 60, 68 and 73). The 1st respondent's explanation is that on the date of the filing of the nomination papers Abu Bucker's jeep came to Tuticorin on which occasion petrol was purchased by his men for that jeep and

that because there are no petrol bunks in his village and constituency, he had to indent on the services of other car-owners for purchase of petrol when they happened to go to places where petrol was available and that is why their car numbers are found in the bills. The explanation appears plausible and it is not likely that the owners who had certainly need for the cars for their own purposes would have parted with them and placed them entirely at the disposal of the 1st respondent during a period of nearly 8 weeks. In view of the evidence of R.Ws. 1, 9 and 10 we are unable to accept the evidence on the side of the petitioner that the 1st respondent had the use of their jeeps.

54. In view of our above finding it becomes unnecessary to decide whether the reasonable hire of these cars even if they were not let out for hire should be added to the election expenses of the 1st respondent. The matter is not free from difficulty The better view appears to be that the reasonable hire for the cars, even if none was in fact paid, should be included in the election expenses for otherwise a candidate with rich and influential friends and supporters would be in a position of vantage compared to his less fortunate rival and the provisions of law as to the maximum of election expenditure could easily be evaded.

55. Next, as to the 1st respondent's car. The petitioner would contend that the 1st respondent has not shown the entire quantity of petrol purchassed for his cars in connection with the election. P.W. 3 speaks to the sale of petrol for MSZ. 4173 on four occasions as per Ex. A-17(a) to A-17(d). The total quantity is 14 gallons and the price is Rs. 37-10-0. P.W. 8 proves the supply of 3 gallons of petrol for Rs. 8-2-6. Ex. A-33 is the copy of the cash bill. P.W. 14 similarly speaks to the sale of petrol on four occasions for the jeep MSP 573 as found in the bill books Exs. A-38 and A-39. The total value is Rs. 68-4-0. P.W. 15, the accountant in Arasan & Co., proves the supply of petrol to the two cars of the 1st respondent on various dates of the aggregate value of Rs. 124-8-0 as per Exs. A-40 to A-48. The plea of the 1st respondent is that whatever petrol was purchased for election purposes has been included in the return and that these purchases do not relate to the election. We believe the 1st respondent. Even during the period of the election campaign the 1st respondent must have had other work to attend to and there is nothing surprising if for these purposes he had to go in his car. R.W. 18 Sri Challapandian speaks to the fact that the 1st respondent came to his (witness's) constituency in his own car on 4 or 5 occasions for doing propaganda. The 1st respondent has included the substantial figure of about Rs. 700 as the cost of petrol in his return and it is too much to contend that whatever petrol was purchased during the relevent period can only relate to the election.

56. The next branch of the petitioner's case on this point is that the reasonable hire of the cars even though it be his own should be shown as election expenses. Our attention was drawn to cases where it has been held that when a candidate employs his business clerks for election work, or uses his own articles for purposes of his election, instead of purchasing them, then the salary of the clerks so employed and the value of the articles should come into the candidate's expenses. The present is not a case of that kind. It is a contradiction in terms to say that a man hires his own property. When the use is of one's own cars, there is no hiring and no payment of hire and there is therefore no question of the amount of hire being included in the return. Faced with this difficulty, the learned advocate for the petitioner put forward an alternative argument and contended that the value of the depreciation at least should be shown as expenses. For one thing, it cannot be described as expenses incurred; for another, it would be difficult to estimate unless it is calculated on a rough and ready basis at a flat rate of so much per miles. The Act and the Rules themselves do not indicate any basis and if the candidate himself were to adopt any rough and ready basis, he might still be running a grave risk if the tribunal should ultimately find that the rate of depreciation adopted by him is even somewhat low; on the other hand if he adopts too high a rate of depreciation out of excessive caution, it would deprive him of a portion of the permissible expenditure for other purposes. The candidate would thus be placed under great handicap and uncertainty. Further the argument carried to its extreme would mean that the loss of the candidate's income for the period of election and the deterioration in his health such as might necessitate medical expenses should all be estimated and included in the expenses. In the absence of any principle or authority to the contrary, we have no hesitation in holding that neither the reasonable hire nor the depreciation value should be included in the expenses. It may also be observed that no plea of the latter kind has been taken in the pleadings and there are no data to determine the actual amount of depreciation.

57. The next contention of the petitioner is that the 1st respondent had election offices at Megnanapuram, Kulasekharapatnam and Thattamadam, besides those admitted by him and the charges of running those offices have been omitted.

P.W. 5, Paul John Thomas says that he let out the first floor of his house to the 1st respondent for his election office and that the latter paid him Rs. 30 as rent. The witness was then a student studying in the college and he says he did not write about this to his father at Bombay. P.W. 6 the village headman, P.W. 9 Sellathurai Vallikutti and the petitioner speak to the running of that office. R.W. 2, Gnaniah Nadar, the paternal uncle of P.W. 5 says that he is looking after his brother's affairs in his village and that the house was not let to the 1st respondent. As regards Thattamadam, we have the evidence of P.Ws. 9, 12, 13 and 26 on the one side and R.Ws. 11 and 13 on the other. P.W. 12 Sudalaimuthu gives evidence that he let his house to 1st respondent at a monthly rent of Rs. 5 and the 1st respondent had his election office there. In this he is supported by P.Ws. 9 and 13. P.W. 12 first stated that the tenancy was settled after *Thai* and adds it was about 8 months prior to the date of his examination which was on 5th June 1953. All that renders his evidence as to tenancy highly improbable. R.W. 11 a resident of Thattamadam is quite positive that no one had an election office at Thattamadam and the 1st respondent did not have one in the house of P.W. 12. The evidence as to tenancy in both cases is oral. We are not impressed with the evidence. As regards Kulasekharapatnam, the evidence is still worse. P.W. 10 Sri Hariharaputhran says that he let out his house to 1st respondent for a rent of Rs. 15 for a month, that besides, his sister Dharmapathni Ammal supplied meals to the workers and that she was paid Rs. 400 in kind and cash by one Sivan Pillai. He stated in chief examination that 1st respondent was not present at the time of the settlement of the tenancy, but gave different version in cross-examination. P.W. 11 Sri Deivanayagam says that he was employed in that office but that he had his meals in P.W. 10's house for about 15 days only. P.W. 9 and P.W. 26 give evidence generally that 1st respondent had an office at Kulasekharapatnam. R.W. 3 Dharmapathni Ammal, the sister of P.W. 10, says on the other hand that there was no election office in her house, that she did not cook food or supply meals to any one and that she was not paid anything by Sivan Pillai. The latter examined as R.W. 4 supports her. The evidence on the side of the 1st respondent is more credible. We accordingly hold that it is not satisfactorily proved that the 1st respondent had election offices at Megnanapuram, Kulasekharapatnam and Thattamadam.

58. The only remaining item relates to the hire of the loud speaker with which 1st respondent's jeep was fitted. The petitioner would estimate the hire at Rs. 1,000, at the rate of Rs. 20 per diem, for 50 days. Though the 1st respondent would not admit that his jeep was so fitted, R.W. 1 says that he had seen it converted into a van with a loud speaker. But there is no satisfactory evidence that it was hired or that it was there all the 50 days of the election campaign. That apart, there is no mention of this in the petition. The loud speaker arrangements referred to there are in connection with the meetings held at particular places. In the circumstances we hold that it has not been proved that any expenses were incurred in connection with the fitting of the loud speaker to the jeep and that this contention is not open to the petitioner.

59. The net result of our discussion on this aspect of the case is that a sum of Rs. 967-11-6 will have to be added to the election expenses shown in the return. The total would still be within the maximum of Rs. 8,000 allowed by law, and there is therefore no contravention of Rule 117 and for that reason no corrupt practice within the meaning of Section 123(7).

60. In the light of our above conclusions we shall now record our findings on the issues (undisposed of).

The first part of issue No. 3 is found in the affirmative. On the last part it is held that the corrupt practice will invalidate the election under Section 100(2)(b). On issues Nos. 5 and 8, we find that the corrupt practices (of employing paid propagandists and publication of false statements) under Section 123, sub-sections (7) and (5) have been committed by the 1st respondent and his election agent R.W. 6, that the other corrupt practices, illegalities and irregularities alleged have not been made out and that the election of the 1st respondent is liable to be set aside on those two grounds.

There are no grounds for declaring the petitioner duly elected and the petitioner does not press the claim. Issue No. 9 is found in the negative.

61. In the result, we declare the election of the 1st respondent void and direct that the 1st respondent do pay to the petitioner Rs. 1,152-10-0 (the total amount of the costs as taxed below) including vakil's fee Rs. 700, and bear his own. We find that the corrupt practices of "making false statements as to candidates"

[Section 123 sub-section (5)] and "illegal employment" [Section 123 sub-section (7)] have been committed by the 1st respondent and his election agent Sri K. T. Somasundaram, and name them accordingly under Section 99 of the Act.

Pronounced in open Court, this, the Fourth Day of January 1954.

(Sd.) K. S. VENKATRAMAN, *Chairman.*

(Sd.) R. RAJAGOPALAN, *Member (Judicial).*

(Sd.) P. R. NARASIMHA AYYAR, *Member (Advocate).*

PARTICULARS OF COSTS

(Cost incurrued by the petitioner).

| | | Rs. | As. | Ps. |
|---|---|---|---|---|
| 1. Stamp on vekalat | .. | 1 | 0 | 0 |
| 2 Stamp on petitions (including lists) | .. | 6 | 12 | 0 |
| 3 Service of process | .. | 196 | 14 | 0 |
| 4 Subsistance allowance | .. | 248 | 0 | 0 |
| 5 Vakil's fee (allowed) | .. | 700 | 0 | 0 |
| | Total Rs. | 1,152 | 10 | 0 |

(Rupees one thousand one hundred and fifty two and annas ten only).

(Costs incurred by the 1st respondent—to be borne by himself).

| | | Rs. | As. | P. |
|---|---|---|---|---|
| 1 Stamp on vekalat | .. | 1 | 0 | 0 |
| 2 Stamp on petitions (including lists) | .. | 3 | 12 | 0 |
| 3 Service of process | .. | 106 | 6 | 0 |
| 4 Subsistance allowance | .. | 56 | 7 | 0 |
| 5 Vakil's fee (fixed) | .. | 700 | 0 | 0 |
| | Total | s. 867 | 9 | 0 |

(Rupees eight hundred and sixty seven and annas nine only).

(Sd.) K. S. VENKATRAMAN, *Chairman.*

(Sd.) R. RAJAGOPALAN, *Member (Judicial).*

(Sd.) P. R. NARASIMHA AYYAR, *Member (Advocate).*

APPENDIX

*Issue No.* 1.—The first preliminary objection of the 1st respondent to the maintainability of the petition is based on the ground that in the first petition dated 5th April, 1952 all the duly nominated candidates were not impleaded as required by Section 82 of the Representation of the People Act and the second preliminary objection is based on the ground that the second petition dated 6th April, 1952 was not accompanied by the deposit of Rs. 1,000 for security. To understand the scope of these preliminary objections, it has to be stated that the petitioner filed two petitions, the one dated 5th April, 1952 and another dated 6th April, 1952. In the first petition he impleaded only the three other candidates who actually contested the election, but not the candidates who were duly nominated but withdrew their nominations. To this petition he enclosed the Treasury receipt for Rs. 1,000 being the security for costs as required under Section 117 of the Act. On 6th April, 1952 he sent another petition impleading all the candidates duly nominated, including those who subsequently withdrew. This is of course what Section 82 required him to do. But to this petition he did not attach a further receipt for Rs. 1,000 but in his covering letter to the petition dated 6th April, 1952 to the Election Commissioner he made a request that the petition dated 6th April, 1952 may be treated as part of the earlier petition or taken as supplementing or supplanting the same, to quote his words roughly. Both the petitions reached the Election Commissioner within the time prescribed by Rule 119 of the Representation of the People (Conduct of Elections and Election Petitions)

Rules. It is on these facts that the learned counsel for the 1st respondent argues that the 1st petition is liable to be rejected *in limine* for non-compliance with Section 82 and that the second petition should also be rejected for non-compliance with Section 117. Section 82 says that a petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated. Section 117 says that the petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for costs of the petition.

2. We think that an effective reply to the contentions is that really the petitions were not separate but constituted only one petition in the eye of the law. That was the request of the petitioner himself to the Election Commissioner. Even otherwise, it may be pointed out that though Section 82 requires all the parties duly nominated to be impleaded, the omission to implead them is not by itself a reason for dismissing the petition *in limine* and an opportunity should be given by the Tribunal to the petitioner to amend the petition by impleading the parties omitted. It may be observed that Section 85 of the Act which requires the Election Commissioner to dismiss the petition *in limine* for non-compliance with the provisions of Sections 81, 83 or Section 117 does not require him so to dismiss the petition for non-compliance with the provisions of Section 82. Similarly, Section 90(4) of the Act clothes the Tribunal with the power of dismissing the election petition which does not comply with the provisions of Sections 81, 83 of 117 notwithstanding the fact that the Election Commissioner himself has not dismissed the petitioner under Section 85,—but it may be noted that Section 90(4) too does not mention non-compliance with Section 82 as a ground for a preliminary dismissal of the petition. This shows that even in the opinion of the Legislature the omission to implead all the necessary parties is not such a fatal defect that the petition will straightaway have to be thrown out and since the second petition at least impleaded all the parties and it was also filed within the time prescribed, this objection under Section 82 really vanishes.

3. Coming to Section 117, we observe that even if the first petition is ignored, we do not see how the second petition should not be treated as a valid petition. It impleaded all the parties and it was filed within time and the only question is whether the deposit receipt attached to the first petition would not enure for the benefit of the second petition. We do not see any reason why it should not enure for the benefit of the second petition. The petitioner himself requested the Election Commissioner to treat the second petition as part of the first and referred to the deposit made along with the first petition. There has been a substantial compliance with the provisions of Section 117 and that is all that was required. As was observed pithily in the course of arguments, suppose for instance, the petition is sent in one cover and the receipt for the deposit is sent in another cover, can it be said that the receipt for the deposit was not enclosed with the petition? And yet that is what the argument of the learned counsel for the 1st respondent would come to. We have therefore no hesitation in overruling both the preliminary objections in paragraphs 3 and 4 of the counter.

4. Paragraph 5 of the counter of the 1st respondent raises the contention that the petitions were not presented within time. Rule 119 requires an election petition to be presented within fourteen days of the date of the publication in the Official Gazette of the notice of the filing of the return of election expenses and the declaration. The date of publication in this case was 25th March 1952. The first petition reached the Election Commissioner on 7th April, 1952 and the second on 8th April, 1952. Thus both the petitions were filed within fourteen days and when this was pointed out, the learned counsel for the 1st respondent withdrew his objections.

5. Paragraph 6 of the counter says that the petition should be dismissed on account of defective and ante-dated verification. Section 83 of the Act requires the petition to be verified in the manner laid down in the Code of Civil Procedure. Order VI, rule 15 C.P.C. indicates that the person verifying shall specify by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true, that is to say, he should state separately what he knows himself and what he states on information received but which he believes to be true. In this case, however, the verification does not make this distinction and says that "the facts stated in the petition are true to the best of my knowledge, enquiry and belief", that is to say, there is a jumble of the two categories. The other point raised in the counter is that there is a discrepancy in the date of the verification. The

verification in the second petition states that it was on the 5th day of April, but the signature mentions the date as the 6th April. Now, these are obviously trivial matters which could be rectified by amendments. The Tribunal has got power to allow amendments under Section 90(2) of the Act read with Order VI, rule 17, C.P.C. As a matter of fact, the petitioner has put in an application separately today for amending the petition suitably and no serious objection is raised by the counsel for the 1st respondent in respect of those amendments. In view of that, the question of the dismissal of the petition does not arise, but we may point out that it is not imperative on the Tribunal to dismiss the petition on account of this defect, because under Section 90(4) the word used is 'may' and not 'shall' which is the word used in Section 85. We may observe that even the rigour of Section 85 is mitigated largely by the proviso thereunder, under which the petitioner could have filed an amended petition before the Election Commissioner himself even out of time.

6. We, therefore, overrule the objections in paragraphs 5 and 6 of the counter also. Our answer to issue 1 is that the petition is not liable to be dismissed on the grounds set out in paragraphs 3 to 6.

7. *Issue No.* 6.—The scope of this issue is whether the mere falsity of the return of election expenses will by itself be a ground invalidating the election. The point underlying the issue is that *prima facie* the filing of the return of the election expenses, being an event which took place after the election, can in no way affect the antecedent election. Mr. K. V. Narayana Ayyar, the learned counsel for the petition, urged that the wording of Section 100(2)(a) would show that the Legislature did not exclude the possibility of the falsity of the return of election expenses being an invalidating ground by itself. His point is that in contrast to Section 100(2)(b) which refers only to any corrupt practice specified in Section 123, Section 100(2)(a) refers to any corrupt or illegal practice which would include the minor corrupt practice of making a false return of election expenses (which is a minor corrupt practice under Section 124(4). But we do not agree. There are other minor corrupt practices set out in Section 124 with reference to which the wide wording of Section 100(2)(a) can be explained. As we said, *prima facie*, we fail to understand how it can be said that the making of a false return election expenses can be said to have materially affected the result of the election or induced or procured the election of the returned candidate. Of course, in so far as the return omits certain items of expenditure which were forbidden by the Statute or the Rules the petitioner could rely on those items of expenditure as a ground for avoiding the election. For instance, in Schedule D to the present petition itself it is alleged that certain items of expenditure which were actually incurred have been omitted in the return and that if they are included, the maximum limit permitted by Rule 117 would be found to have been exceeded. Similarly, it is stated that more men than those permitted by Rule 118 were employed. It is stated that these would amount to major corrupt practices under Section 123(7) of the Act. The petitioner is of course entitled to adduce evidence on those matters which are covered by issue 5. But, so far as the sixth issue is concerned, it is clear that the mere falsity of the return of the Election expenses is by itself not a ground which can avoid the election. We answer this issue accordingly.

8. *Issue No.* 7.—This issue was framed because at the last hearing Mr. Thangaswami for the 1st respondent contended that because the petitioner claims a declaration that he has been duly elected in addition to the declaration that the election of the 1st respondent is void, it is Section 101 alone which will apply and that consequently no portion of Section 100 can apply. But today Mr. Thangaswami conceded that in so far as the relief prayed for by the petitioner includes the prayer for setting aside the election of the 1st respondent, the grounds under Section 100(2) would certainly be open to the petitioner. But the further argument of Mr. Thangaswami is that the grounds enumerated in Section 100(1) are not open to the petitioner because they are grounds for declaring the election to be wholly void in which case the petitioner cannot seek a declaration that he himself has been duly elected. From a practical point of view, the question boils down to the alleged improper acceptance of the nomination of the 1st respondent which is one of the grounds specified in Section 100(1)(c), because it is conceded by Mr. Thangaswami that the grounds mentioned in Section 100(1)(a) and (b) reappear in some other form in Section 100(2). Thus, the contention of Mr. Thangaswami is that it is not open to the petitioner to contend that the nomination of the 1st respondent was improperly accepted and that therefore the election should be set aside. The argument is that this is a ground specified in Section 100(1)(c) where the Tribunal shall declare the election to be wholly void, but it is not a

ground specifically mentioned in Section 100(2), which says under what circumstances the Tribunal shall declare the election of the returned candidate to be void. But it may be observed that though the improper acceptance of the nomination of the returned candidate is not specifically mentioned in Section 100(2) it can be spelt out of Section 100(2)(c) which mentions as one of the grounds that the result of the election has been materially affected by non-compliance with the provisions of the Constitution or of any Act or Rules or orders made thereunder. Obviously, the improper acceptance of the nomination of the 1st respondent, if made out, would be a non-compliance with the provisions of the Act and it could not be denied that it had materially affected the result of the election. We therefore hold on issue 7 that Section 100(1) as such will not apply because the petitioner does not seek a relief that the election is wholly void, but section 100(2) will apply, and we further hold specifically that it is open to the petitioner to canvass the improper acceptance of the nomination of the 1st respondent.

9. *Issue No.* 10.—We hold that in paragraph 9 of the petition the petitioner has made the necessary allegations. Issue 10 is found accordingly.

(Sd.) K. S. VENKATRAMAN, *Chairman.*

(Sd.) R. RAJAGOPALA AYYAR, *Member (Judicial).*

(Sd.) P. R. NARASIMHA AYYAR, *Member (Advocate).*

[No. 19/110/52-Elec.III/17465.]

By Order,

K. S. RAJAGOPALAN, Asstt. Secy.

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